

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
MOHAMMAD SAAILI SHIBIN,)
a/k/a "Khalif Ahmed Shibin,")
a/k/a "Mohammad Ali,")
a/k/a "Ali Jama,")
)
Defendant.)

CRIMINAL CASE NO.
2:11cr33

TRANSCRIPT OF PROCEEDINGS
(Closing Arguments)

Norfolk, Virginia
April 26 and 27, 2012

BEFORE: THE HONORABLE ROBERT G. DOUMAR,
United States District Judge, and a jury

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE
By: Joseph E. DePadilla, Esquire
Benjamin L. Hatch, Esquire
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Assistant United States Attorneys
Counsel for the United States

ZOBY & BROCCOLETTI, P.C.
By: James O. Broccoletti, Esquire
Counsel for the Defendant

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THE COURT: Let the record reflect the entire jury has returned.

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You may be seated.

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Ladies and gentlemen, we'll now proceed to hearing closing arguments. The government will -- has the right to take 90 minutes, and the defendant has a right to take 90 minutes, but we're going to stop at 5:00 no matter what happens, okay?

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I'll also tell you we can't keep people overtime. We've got a real problem now because we've got a monetary problem, just like most other people have, so we can't utilize any overtime. I just thought I'd tell you where we were.

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All right. You have 90 minutes, any part of which you want to take. It's my understanding you want to take an hour now or up to an hour.

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MR. DEPADILLA: Yes, sir. Thank you.

May it please the Court, Mr. Broccoletti, ladies and gentlemen of the jury. Let's review some of the law and the evidence in this case.

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There is no issue that all of the crimes charged were committed in this case. There's really no issue about that. The crew of the Marida Marguerite was hijacked on the

1 high seas and held hostage from May to December of 2010. No
2 issue. Everybody agrees about that. The Americans on the
3 Quest were hijacked on the high seas and held hostage from
4 February 18 through the 22nd, 2011. Again, no issue about
5 that, ladies and gentlemen.

6 The attacks were violent. They involved weapons,
7 very dangerous weapons; machine guns and rocket launchers.
8 And these people were taken by force. There's no issue about
9 that, ladies and gentlemen.

10 Crew members were tortured. You got to see five of
11 them from the stand; the captain, the chief, some of the
12 engineers from down below. Scott and Jean Adam, Phyllis
13 Macay and Bob Riggle were killed. Again, there's no issue
14 there. These things happened.

15 The defendant is not contesting that any of these
16 acts occurred, ladies and gentlemen. What he is contesting
17 is his responsibility for those acts and the other pirates
18 that he was working with. That's the issue in this case, if
19 there is one.

20 So what is piracy? The definition of piracy
21 specifically includes the evidence that shows the defendant
22 did it here. Piracy means any illegal acts of violence or
23 detention or any act of depredation committed for private
24 ends by the crew or passengers of a pirate ship and directed
25 on the high seas against another ship or persons or property

1 on board such ship. That's a bunch of guys going out to sea
2 with AK-47s and a rocket launcher looking to take ships for
3 ransom.

4 What's important, ladies and gentlemen, is the
5 second half of that definition: "...or any act of inciting
6 or intentionally facilitating an act described in (a)."
7 That's the support structure, ladies and gentlemen, the
8 people back on the land that made this pirate organization
9 work. Because just having six guys in a boat with a bunch of
10 AK-47s, not able to speak English, is not going to get a
11 \$5 million ransom. That's just not going to work. You have
12 to have those people on the land, too.

13 So what is conspiracy? It's very simple. It's an
14 agreement to violate the law. You have to have two people to
15 do it. It doesn't have to be in writing. It doesn't even
16 have to be successful. Merely associating with criminals is
17 not a conspiracy, but if the defendant agrees to commit a
18 crime he is guilty of the conspiracy, regardless of whether
19 he personally did anything to further the goals of the
20 conspiracy. Ladies and gentlemen, the evidence in the case
21 showed the defendant did a lot of things to further this
22 conspiracy, and we'll review them down the road.

23 The government must prove beyond a reasonable doubt
24 that the defendant joined the conspiracy. The government
25 does not have to prove the defendant did anything personally

1 to carry out that conspiracy. It is sufficient to find the
2 defendant guilty whom agreed to the conspiracy and stood
3 ready to do his part. The evidence showed whatever the
4 pirate organization needed this man to do he was willing to
5 do it, be that to negotiate ransom, be that to translate
6 between the crew and other pirate guards, or even when he was
7 demoted he stepped up. He took an AK-47 and he protected the
8 front of the Marida Marguerite. Any of those jobs makes him
9 a pirate.

10 In the kidnapping conspiracy that charge is the only
11 charge that the government has to prove an overt act. That's
12 an act that furthers the conspiracy. Several overt acts are
13 alleged in the charge, and you need only find that one of
14 them was committed to find an overt act to satisfy this
15 element. One of those overt acts is, in fact, that the Quest
16 got hijacked, which, once again, is not an issue in this
17 case. The defendant doesn't have to be the one that
18 committed that overt act, anyway. That can be those six
19 attackers that took the Quest back in February of 2011.

20 Another element of the law is aiding and abetting.
21 There are three elements to that. The defendant had to know
22 the crime charged was going to be committed or was being
23 committed, knowingly did some act for the purpose of aiding,
24 commanding or encouraging the commission of that crime. The
25 defendant is guilty of all three of those. He did plenty of

1 things on the Marida Marguerite and getting the Quest ready
2 for ransom for commanding, encouraging and aiding, and he
3 acted with the intention of causing the crime to be
4 committed.

5 Ladies and gentlemen, the evidence absolutely proves
6 that this defendant's interests were aligned with his pirate
7 organization. They were aligned with Liban Abdurahman,
8 Balixule, Haji Khyr and Jama Abdikadir. They all had the
9 same purpose. It was just to make money off the backs of
10 other people.

11 For aiding and abetting, though, you must be a
12 participant, not a mere spectator, and the evidence proves
13 beyond a reasonable doubt this man did much more than just
14 stand by and watch. He participated directly in these
15 crimes.

16 A member of a conspiracy is guilty of all the crimes
17 committed by others members of the conspiracy that are in
18 furtherance of that conspiracy. When you're a member of this
19 group you buy into all their acts. That's conspirator
20 liability.

21 Three elements: The crimes charged were committed
22 by a member or members of the conspiracy; the crimes were
23 committed during the conspiracy and in furtherance of those
24 goals or objectives; and at the time the crime was committed
25 the defendant was a member of that conspiracy. It's just

1 that simple. Once he decides to throw in his lot with these
2 other pirates in this pirate organization he's responsible
3 for all the acts. It doesn't matter that he's not the one
4 that pulled the rope and hoisted the captain and the chief up
5 into the air. It mattered that he was doing the
6 interrogation before that happened. That makes him
7 responsible for the torture that happens afterwards. It
8 directly flows.

9 Let's review the evidence. The defendant confessed
10 to the FBI Agents D'Amico and Coughlin that he willingly
11 became a pirate negotiator. He even referred to Liban, which
12 is Liban Abdurahman, who was one of the main actors in this
13 pirate organization. He needed the money because he lost his
14 job with the oil company. The man was looking for
15 employment. Pirates are a good place to go in Somalia for
16 that employment. He admitted this was a picture of him
17 working as a pirate negotiator on the Marida Marguerite. He
18 secured a \$5 million ransom. His interests are aligned with
19 the overall organization.

20 He interrogated the crew to maintain order. The
21 organization needed to know how much fuel, how much water,
22 and how many satellite phone connections there were. That's
23 the only way it could control the boat. He stole items from
24 the crew. He took the chief's glasses. He was wearing his
25 shirts every other day. And from Chirag Bahri you heard he

1 walked off the ship with a laptop as a parting gift. That
2 makes him a pirate, too.

3 And he was paid a lot of money, ladies and
4 gentlemen. In his luggage an opening of an account on
5 January 6. That's about nine days after the ransom paid out.
6 It shows he deposited 370 one hundred dollar United States
7 bills, for a total of \$37,000.

8 The defendant is not contesting that any of these
9 acts occurred. This evidence alone is enough to convict him
10 of the charges related to the Marida Marguerite. Those are
11 Counts One through Six of the indictment. But the evidence
12 also proved the defendant did many things on the Marida
13 Marguerite that made him a key part of the pirate
14 organization.

15 The negotiator is an important employee of this
16 group, as evidenced by the fact of how hard this defendant
17 fought to keep that job; that he facilitated torture to
18 secure the ransom and control the crew; that he received
19 payment, significant related to the other pirate jobs; and
20 that when he got demoted he didn't get kicked out of the
21 pirate organization, he just got a less preferable job within
22 there.

23 Let's go to call 50. "Yeah, okay, Mike. Thank you
24 for calling. I'd like to inform you that I have to hand over
25 my assignment. Mr. Leon will take over as of today." That

1 was on September 19th of 2010. Forced to give up the job.
2 "I have to hand it over." This isn't someone who wanted to
3 give it up, this is someone who had to.

4 Moving on to call 435: "I think Leon" -- "I am
5 asking you to take over his place. Leon is not affiliated
6 with the ship. I'm speaking with you now." Asked by Mike:
7 "So you are again the negotiator?" He says, "Yes." And then
8 he says, "If Leon tried to call you" -- "if he calls you that
9 must be his personal call." "His personal call" -- that's on
10 October 21st of 2010. He's trying to get this job back
11 because this job is important to him; it pays a lot of money.

12 Call 787: "The reason I'm calling you is to
13 officially tell you that Leon has been stopped from
14 contacting you. I mean, he's not in charge of the Marida
15 Marguerite negotiations."

16 What does that mean, ladies and gentlemen? This man
17 was now in charge of the Marida Marguerite negotiations. And
18 after these days is when the ransom actually paid out. He
19 finished the job.

20 He then puts on the captain, and the captain says,
21 "Now Ali. Ali is the negotiator. He's going to finish."
22 That's on December 8. The negotiator is important to this
23 organization. The defendant did everything he could to make
24 sure he was the one that had the job and that Leon was out.
25 In that job he facilitated torture to secure a ransom and

1 control the crew.

2 In call 231: "Actually, the captain's life was
3 severely threatened by one of the pirates. He was about to
4 shoot him in the head." That's on May 17th, 2010. You hear
5 testimony from Captain Makane, though, that that wasn't even
6 true. The defendant is just using the threat of torture to
7 move the negotiations. As the evidence showed, mock
8 executions did not start until the first week of July, 2010.
9 He's just using it as a negotiating tool -- torture. And the
10 defendant gave his theory on torture in these calls. "Yes,
11 but they say the problem is as the crew are watching them on
12 live television that whenever they punish the crew the
13 company will, you know" -- "you know, will pay the agents
14 immediately. I said, 'why are you, you know, punishing these
15 helpless people who come from India? Nobody is going to see
16 you. So, you know, to make some deals out of it.'"

17 Ladies and gentlemen, that's not "Don't torture the
18 crew," that's, "Don't torture the crew if the company can't
19 see you and we can make a better deal out of it." That's
20 what the defendant feels about that.

21 Oleg and Makane were hung the first time for
22 refusing the defendant's order that they give that precious
23 fresh water they are making to keep the crew alive to other
24 pirate ships. That's why they hung them up. The other
25 torture was related directly to the ransom, the defendant's

1 interrogation of the crew for fuel oil and satellite phone
2 connections, so they could keep this situation under control
3 and get the ransom.

4 You heard from trainee Robin Varghese. "I had told
5 Shibin about the pain in my testicle before. I screamed to
6 him to tell the commander that this was my first day back on
7 the job. I didn't know how much oil we had. Shibin did not
8 translate my answers."

9 Sandeep Denghwal, Chirag Bahri -- and this was from
10 them: "They dragged me before Shibin as he sat on this bed.
11 Shibin said, 'Stand properly if you are going to talk to
12 me.'" Remember, he'd already testified that he had been hung
13 for four hours and they'd put those cable ties on his legs so
14 he couldn't stand properly. "When he asked why my shirt was
15 wet he laughed at the fact that I said I had peed on myself
16 when I got the cable ties taken off me." That's someone
17 directly involved in this conspiracy, ladies and gentlemen.

18 Shibin said, "If you do not tell us the truth we
19 will torture you again," or, "We will kill you again." Not
20 that, "The pirates will do that," but that, "We will do
21 that." And we'll see other documents that further reflect
22 that. And he said to Sandeep, "I will show you who I am,
23 that I'm in control, that I'm in control of this process, and
24 you better tell us what we want to know or it's going to get
25 worse."

1 You heard from Captain Makane. You saw the wounds
2 that were left on his arms four months later after these ties
3 were taken off. "I screamed out to Shibin as they tightened
4 the cable ties, and I lost all feeling in my limbs. He sat
5 there and said, 'Don't call my name, don't involve me.'"
6 Remember, he constantly said on this wiretap that he was the
7 protector of the crew and he was there to translate for the
8 other pirates. None of the evidence bears that out.

9 Chief Oleg Dereglazov again had similar wounds on
10 his arms. "When I was tortured Shibin said, 'Forget my
11 name.'" Shibin gave a speech when he was leaving and said,
12 "We are not going to stop. This is a business." And it is a
13 business, and it's a big business, ladies and gentlemen.

14 Shibin pointed at my crotch and said, "Next we can
15 tie you." I told him, "You can, but you'll have to kill me
16 first." What did the evidence show, ladies and gentlemen?
17 They tied Robin, Oleg's trainee, instead. And you saw the
18 pain from his face when he talked about that. It was worse
19 for him that it was his employee and not him.

20 The timing of the torture -- it all occurred during
21 the first week of September or the beginning of the second
22 week, a few days before Leon becomes the official negotiator.
23 But right before that the defendant uses one final play. He
24 says, "The pirates have started something very bad. They've
25 started torturing the crew. They're tying plastic cables to

1 their balls." That's five days after it happened. He's not
2 reporting it as it's something that the company can do to fix
3 it, he's just using it in one last gasp to move the company
4 to finish the ransom negotiations because he knows he's
5 getting fired. He's going to get demoted at that point.

6 Look at his relationship with other pirates. All of
7 the victims said he ate with them, he chewed khat with them,
8 he laughed with them. Even when the torture was going on.
9 That shows he's part of the group. There is no issue the
10 defendant allowed crew members to use his cell phone to call
11 home, just as there is no issue that he forced those crew
12 members to tell their families to pressure the company to pay
13 more.

14 Chirag Bahri: "Shibin came back from being gone for
15 ten days. He had an Internet article about my parents. He
16 made me call my mother. He punched words into my mouth to
17 make my parents pressure the company into paying ransom.
18 That was the last time I ever spoke to my mother."

19 The payment is significant related to other pirate
20 jobs. Remember how he describes the attack pirates? He
21 says, "They will take a small skiff, you know, with arms, and
22 go sail deep. They don't even know the reaction that will be
23 from the ship, if they will get killed, or if they will get
24 fired at or" -- you know, they are so wild that they have the
25 courage to do that. These are the same men that are taking

1 out these ships with automatic weapons.

2 The defendant admitted he received \$30,000 from the
3 FBI for being a pirate negotiator. Remember, we had
4 Sarin-daaq on the stand, and he heard the defendant say he
5 received \$50,000. And in between that, some nine days later,
6 he deposited 370 hundred-dollar bills. It would seem like he
7 got somewhere in between \$30,000 and \$50,000 to do this ship.
8 Where else is he going to get American hundred-dollar bills
9 to put into a new bank?

10 There is no issue that the defendant was paid. He
11 admitted it to two FBI agents. They recovered the bank
12 records. Many pirates were paid from the Marida Marguerite.
13 Remember, we put into evidence that SAMI sheet, but that SAMI
14 sheet cannot possibly be a complete listing of all the
15 pirates. You'll remember the testimony said about 120
16 pirates were there to get paid. That list is only about 20
17 pirates, and there's a pretty big name missing of that list
18 besides the defendant -- Liban, the commander, who gets more
19 money.

20 Finally, the defendant never left this pirate
21 organization. He got demoted, which meant being a guard.
22 And there's no issue at some point that when the other
23 members of his organization got upset with him for not
24 finishing that ransom they detained him. Where's Ali? Ali
25 is not connected anymore. He's imprisoned in his cabin down

1 below. That was on August 5th of 2010. But, remember,
2 Captain Makane said the defendant told him to say this, so
3 it's not even clear whether or not he was under detention
4 then.

5 And if you remember, in Exhibit 1-39, which is three
6 days later, he's back on the job negotiating the ransom. So
7 he certainly wasn't out of favor all that long; although, he
8 did end up sleeping on the deck, instead of sleeping in the
9 chief officer's cabin now, and didn't get the choice khat
10 anymore. That was part of the demotion, too.

11 The crew witnesses agree the defendant was demoted
12 to a pirate guard and he carried an AK-47 now. The defendant
13 threatened Sandeep Dengwhal with that AK-47 when Sandeep
14 would not fix a leak. The detention and demotion did not
15 mean the defendant was not a pirate, it just meant he was a
16 less-important pirate. He was still part of this
17 organization. That's why he fought so hard to get his job
18 back. It's better to be the negotiator than to just be a
19 pirate guard.

20 We also had testimony from pirates of the Quest.
21 The first one was Jilani Abdiali. He told you Liban, Hilaac,
22 Haji Khyr and Balixule were investors in the Quest. "Jama
23 Abdikadir got us the boat." He said, "Haji Khyr told me
24 Shibin was also an investor." He's moving up the food chain
25 now. He got a good payout from the Marida Marguerite. Let's

1 try and get more on the next pirate mission. Jilani freely
2 admitted, "My only thought when I became a pirate was to get
3 money." Ladies and gentlemen, the evidence has proved beyond
4 all doubt this was all about money, and that's all it was
5 about.

6 Sarin-daaq testified Liban, Hilaac, Haji Khyr and
7 Balixule were investors in the Quest. Jama got the boat. "I
8 picked up Liban, Hilaac and Shibin when they came off the
9 German ship to give them an armed escort out of Garaad." Why
10 does the defendant need an armed escort out of Garaad unless
11 he's carrying that \$30,000 to \$50,000 in that plastic bag
12 everyone described? And, remember, he had one of the crew's
13 laptops as well. That could get robbed. That's why he's got
14 an armed escort. He's important in this pirate organization.
15 Sarin-daaq testified the investors pick the negotiator.

16 Even Juguuf, who got on there today for the
17 defense -- and, remember, ladies and gentlemen, the defense
18 doesn't have to put on any evidence. They have no burden at
19 all. The government always bears the burden beyond a
20 reasonable doubt, but when they put on a defense it becomes
21 my job to comment on it.

22 You can evaluate Juguuf. You can tell from his
23 testimony he's given many statements to the government about
24 Shibin and other pirates, but one thing he agreed on with all
25 these other pirates is it was the investors that picked the

1 negotiator. And when we get to the phone you'll see how
2 important that statement is that came out of the defense
3 witness's mouth.

4 The Navy begins to follow the Quest. The pirates
5 say, "Call Shibin. He's our negotiator," and they give the
6 defendant's number, 228675. Does it make sense with all of
7 the might of the United States Navy coming down on them that
8 they would indicate the wrong guy who was going to help them
9 out, that they wouldn't have this set up ahead of time? It
10 makes no sense at all.

11 There's no issue the pirates had Shibin's number,
12 even if it was not in the contacts in their phone books, as
13 Mr. Broccoletti brought out. Because, remember, there's no
14 other way the Navy could get the number except from the
15 pirates at that point. That's just not an issue. They gave
16 the number to the Navy.

17 But let's take a look at that phone, because it is
18 an important piece of evidence, the phone behind that number.
19 Who are in the contacts? Our old friends Jama Abdikadir and
20 Hilaac. Jama Abdikadir provided the Yemeni boat for the
21 Quest attack, and here is Hilaac sitting on the SAMI list for
22 the Marida Marguerite, both in the defendant's contacts.

23 Who else is in his contacts? Mohamud Haji Khyr. He
24 was an investor on the Quest. All the pirates, including
25 Juguuf, agreed to that. He's the guy who was bringing on the

1 supplies. Ladies and gentlemen, these pirate groups are
2 somewhat complex. Everyone has their job to fulfill to reach
3 that end goal, to get that \$5 million payout. He's the
4 negotiator. Haji Khyr -- he's the supply guy. Liban? The
5 high guy, the brains behind the organization. And then other
6 people who have shares.

7 What's important is they're all in the defendant's
8 phone book. Juguuf, one of the leaders from the Quest
9 attack, the guy who testified for the defense, all in this
10 phone. What else is in the phone? What else is in the phone
11 are the contacts the pirate organization had with this man
12 while the Quest was going on that showed he was right in the
13 middle of it. It starts with Liban calling in or texting in,
14 "It's Liban." This was on the day the Quest was taken.
15 Obviously, the defendant didn't get the message, because it's
16 followed up with, "Uncle" -- wise man -- "this is Liban
17 Abdurahman." He wants a call back.

18 Of course, we know Liban from the Marida Marguerite.
19 He had some of the highest debts on the ship because he's a
20 commander. He's probably paying for the khat, for the goats,
21 for everything else. And that just gets settled up at the
22 end.

23 Hilaac chimes in: "Call Hilaac at 255506."

24 Then another text comes through from the mystery
25 number: "Sarin-daaq captured Americans." And that's

1 important, ladies and gentlemen, the detail of that message,
2 because this is on February 19th, very early in the Quest
3 incident, and there's no possible way that the name
4 Sarin-daaq has gotten out there. That's intrinsic to the
5 pirate organization. That's someone in the pirate
6 organization telling someone else in the pirate organization
7 that Sarin-daaq is taking Americans.

8 What is the defendant doing? He's running searches
9 on Jean and Scott, 12 separate searches over the three days
10 associated with the Quest. He searched information to assess
11 the value of the hostages and who to contact for the ransom.
12 He's doing his job, just like he did his job on the Marida
13 Marguerite.

14 What else was in the phone? The exact same text for
15 other ships just a little bit earlier in the month. If you
16 look at Government's Exhibit 2-12 -- this is on February 11,
17 about a week before the Quest happened -- hijacked an oil
18 tanker, get the phone number, get the area code, find out
19 what the area codes are, get the contact information, and
20 most importantly, get the satellite phone number. We had a
21 lot of testimony from the stand. The satellite phone number
22 is important to one person in the pirate organization, the
23 negotiator, because they need control of that to negotiate
24 with the company. That's the same exact searches on those
25 ships as the Marida Marguerite -- as the Quest.

1 Ladies and gentlemen, one piece of evidence that I
2 would encourage you to look at is Exhibit 2-10 H. What it is
3 is a chronological chart of the contacts between the pirate
4 commanders and this defendant over the course of the Quest.
5 It starts on February 18th, and it runs right through the end
6 of the Quest on February 22nd. What does it show? In the
7 four days the Quest was being hijacked the defendant made one
8 outgoing call and spoke with Balixule. All of the pirates on
9 the stand agree Balixule is an investor in the Quest.

10 And that same day -- in that same four-day period
11 the defendant made 12 outgoing calls, received two incoming
12 calls and had eight contacts or conversations with the
13 mystery number, the number that said "Sarin-daaq captured
14 Americans."

15 In that same four-day period the defendant made
16 seven outgoing calls, received one incoming call and had two
17 times that he connected in conversations with Mohamud Haji
18 Khyr. All the pirates agreed Mohamud Haji Khyr is a pirate,
19 and, uniquely, the defendant told the FBI that Mohamud Haji
20 Khyr is a pirate and, in fact, that he had offered him the
21 Quest job.

22 Same four-day period, 19 outgoing calls, received
23 one incoming call and had nine connections or conversations
24 with Liban Abdurahman, the head pirate on the Marida
25 Marguerite.

1 And in that same four-day period the defendant made
2 43 outgoing calls, received two incoming calls and had 14
3 conversations or contacts with Hilaac, the other pirate
4 commander from the Marida Marguerite.

5 The defendant made 82 outgoing calls, received 6
6 incoming calls and had 35 contacts. And, yes, ladies and
7 gentlemen, some of those contacts were of a very short
8 duration, when you look at the chart, but when a criminal
9 organization is doing its business certainly they're not
10 going to want to spend a lot of time on the phone. Sometimes
11 it's enough to make the call and say, "Yes, I've got the
12 number." It takes about five seconds, all with known pirate
13 investors or commanders.

14 And remember, ladies and gentlemen, that's just on
15 this phone. The defendant can have more than one phone.
16 Many of the pirates do. But this is the phone that the host
17 nation forces found on him and turned over to the FBI.

18 So once he was arrested FBI Agents D'Amico and
19 Coughlin asked him about his involvement, and he gave a
20 different story with each agent. The important difference
21 was D'Amico was in Somalia, on the defendant's home turf.
22 Remember, he testified that he searched him once. He had no
23 money. He never left custody, and all of a sudden he had
24 sixteen hundred bucks. It's good to be on your home field,
25 ladies and gentlemen.

1 Coughlin was different. He was on a plane back to
2 the United States. Things were getting a little bit more
3 serious at that point. He admitted to D'Amico that the phone
4 and searches with the Quest was his. He stated he lost that
5 phone, conveniently, in Zambia a few weeks before.

6 He admitted that these searches were all his, and he
7 admitted he had an auto alert on his phone for piracy because
8 you had to know the number of people and the value of the
9 boat. You only need that for one job in the pirate
10 organization. That would be the negotiator.

11 "He admitted he knew Juguuf as a policeman in
12 Bossasso. He told me he was going to visit pirates and that
13 Liban, the pirate boss, said Juguuf had joined the crew. He
14 stated he ran these searches out of personal curiosity."
15 That's what he told the first FBI agent when he was on his
16 home turf. Personal curiosity did not work, ladies and
17 gentlemen, and the defendant needed a new story.

18 He tells Agent Coughlin he knew Juguuf from an oil
19 company. He did not know he was a pirate. So already he's
20 inconsistent. He did not know why Juguuf would give his name
21 to the Navy as the negotiator.

22 He had heard of Sarin-daaq, but he did not know him.
23 But we saw the text. Why would the pirate organization be
24 sending him the "Sarin-daaq caught Americans"? It's because
25 he's not being truthful with Agent Coughlin, either.

1 He received a call -- this is his testimony. He
2 received a call from Haji Khyr offering him a job. He did
3 the searches for two days, and then he called back to reject.
4 That's not personal curiosity, ladies and gentlemen. Now
5 he's getting a little bit closer to the truth that he's
6 working within the organization.

7 How many calls did we hear on the Marida Marguerite
8 where the defendant said he was not a pirate and that he
9 hated them, that they were bone heads, that his life was in
10 danger, that he was a hostage, too? It took him two days to
11 turn down the job? Well, maybe the money is worth all that.
12 Or maybe none of those other things ever happened and that he
13 was part of this organization the whole time.

14 He said to Coughlin that he quit after two days
15 doing the searches, but if you look at that chart he's still
16 doing the searches three days later. He's trying to pin down
17 the telephone codes for the Adams.

18 The pirates told him about Sarin-daaq the day after
19 he took the Quest. There's no issue, then, that the pirate
20 organization somehow was in contact with the Quest.
21 Otherwise, there's no way they could be transmitting this
22 information to the defendant. They're out in the middle of
23 the Indian Ocean, but the organization knows to tell the
24 negotiator that Sarin-daaq is the one that took the boat.
25 The evidence has shown this is a very sophisticated group the

1 defendant is working within.

2 And if the defendant's 35 conversations or contacts
3 with pirate leaders during the Quest hijacking have an
4 innocent explanation why does he tell two different stories
5 to two different FBI agents in two different days -- two
6 successive days, actually? It doesn't make good sense,
7 unless he's hiding something.

8 And take a look at Defense 10. That was all the
9 phone yield from beginning to end, not just the phone
10 contacts that were directly related to the investigation. We
11 know the defendant deletes from the phone, right? Balixule
12 is in there, identified as being the caller, but he's not in
13 the contacts, which means he later had to delete Balixule for
14 some reason in the time between when he made the call and
15 when the phone was taken from him.

16 And where is the phone? He said he lost it in a
17 cab. Ladies and gentlemen, if you look at the very first
18 screen shots on the phone he had that phone for four years.
19 But he managed to lose it in the few weeks between the time
20 the host nation forces take it and give it back to him and
21 he's arrested? It does not matter that there are only two
22 calls to Haji Khyr during the Quest hijacking. There are
23 many more calls to Liban, Hilaac and the mystery number and
24 Balixule. This is one big organization working together.
25 And remember from the testimony of the pirates, Haji Khyr is

1 actually lowest on the food chain. He's the supply guy
2 getting stuff for the boat. The people making the decisions
3 are much more likely to be the ones the defendant has more
4 conversations with.

5 The defendant could have had another phone. Many
6 pirates do. And remember he said that he used that phone to
7 turn down the job after two days of doing those searches.
8 Does anyone make 82 calls to turn down a job? And remember
9 what the defendant said about the pirates on the Marida
10 Marguerite wire? That they were so mean that he didn't want
11 to give them any bad news. Why would you call people you
12 didn't want to give bad news to 82 times to turn down the
13 job? That doesn't make a lot of sense, either.

14 And now why is he on a third story, ladies and
15 gentlemen? Remember, the Judge told you from the very
16 beginning openings are not evidence, but they do contain
17 words, and they're important. The defense contended in the
18 opening that he could not do the job because he was going on
19 vacation. There's no evidence of that in the record. The
20 defense told you in the opening that there are two sides to
21 every story. But with Shibin there are many stories to his
22 side, and that's the problem with his defense. Journalist,
23 NGO, hostage, curiosity, didn't take the job -- all of these
24 have been thrown out by the defense as a lifeline.

25 The defendant opened on that he was an investigative

1 journalist who just didn't accept the job. The problem with
2 this story -- or having any evidence of this -- is that he
3 never told the company, crew or FBI he was a journalist. The
4 first time anyone heard about that was in the opening.
5 There's no evidence of journalism. If you look at his screen
6 shots for his searches, what journalistic value would any of
7 these searches have? They're much more important for
8 ransoming ships. Why would the value of the vessel be
9 important to anyone but a pirate? And remember, at least for
10 these searches he admitted they were piracy to Agent
11 Coughlin. There's just no evidence of any journalism. The
12 other searches were similar -- or some of the other searches
13 were similar for this Italian ship. And, once again, what
14 use is a satellite phone number going to be for a journalism
15 story? It's really important for a pirate negotiator,
16 because it allows you to call the company to demand ransom.

17 There's no issue, ladies and gentlemen about the
18 quality of information the defendant received back. If you
19 look at his searches, he didn't do the best job of doing
20 them. He got Jean and Scott's last name wrong from the
21 get-go, and that later came back with more information which
22 led him to Maryland. They're not from Maryland, they're from
23 California. But remember who your audience is. Your
24 audience is your pirate commanders who don't speak English.
25 "Yeah, Boss, doing the searches, getting information.

1 They're Americans. They're from Maryland." Don't get caught
2 up in the quality of the information that he was getting
3 back. What's important is the fact that he's doing these
4 searches in the time frame of when the pirates are holding
5 the Quest and getting "it ready for ransom, when that
6 organization is working.

7 For the journalist he was an NGO hostage. Call 231:
8 "I work for a local NGO, a human rights NGO in this area. I
9 volunteered to do this job." That's the very first call on
10 the wire, ladies and gentlemen, that was played.

11 "I want to continue my work as a human rights
12 advocate. I have already made proposals to so many NGOs to
13 help reduce the number of piracy in Somalia." Now he's going
14 from working for an NGO to being a human rights advocate to
15 reduce piracy. "I'm calling from Marida Marguerite ship.
16 Can I get your name?" "My name is Ali Jama. Yes, my name is
17 Ali, Ali Jama. You can call me Ali anytime." Why would an
18 NGO give a false name during negotiations? Remember, the
19 only evidence you have of this man's name is his passport and
20 his banking records, and none of them come back to Ali Jama.
21 His name is Mohammad Shubin.

22 Call 37: "What kind of NGO is that," the company
23 asked. "We -- we -- we -- we work for human rights because
24 in Somalia human rights are abused." He never gives a
25 detailed answer. If you worked for an NGO certainly you'd

1 know what they did and what the organization was called. He
2 never tells Agent D'Amico about being in an NGO; he never
3 tells Agent Coughlin about being in an NGO.

4 Call 787: "The commander is with me now. I have
5 asked him please" -- "the question, Mike. He says we are not
6 going below 6 this time, he says." Remember, ladies and
7 gentlemen, this is when the defendant actually upped the
8 ransom on where Leon was. Leon was between 5 and 5.6. Now
9 we're going back up to 6 million. And Mike says, "That
10 doesn't make any sense."

11 He follows on with, "What is Leon's demand? Tell me
12 so either we will make it better, if his demand is harsher
13 than ours." Look at how he's describing himself at this
14 point, when he's upping the ransom: "Tell me so that we can
15 either..." "So we will make it better," "If it's harsher than
16 ours..." He's not distancing himself from the pirates
17 anymore because he's close to the end of the negotiations.
18 He's going to get aid. An NGO would never say "we" and
19 "ours." It makes no sense.

20 "Well, no, the demand I got from Leon is much
21 lower." What kind of NGO ups the ransom amount later in the
22 ransom negotiation? NGOs are supposed to help the situation,
23 not make it take longer.

24 Also in call 231: "I volunteered to do this job,"
25 he says. But, as the evidence showed, by the end he just

1 wants to get paid. He even wants to squeeze the company to
2 pay him more.

3 Call 965: "Don't you think I deserve some kind" --
4 "some kind of rewarding from the other side? It's your moral
5 obligation. You know, it depends on you."

6 And he writes in fax 175: "As communication
7 facilitator between you and the pirates, please kindly
8 allocate for me some money for the services I have rendered.
9 Best regards, Ali." That's not a volunteer. That's not an
10 NGO. That's a pirate trying to squeeze more money out of a
11 victim.

12 Call 967: "I am worth giving. You know, if it's in
13 my name, a gift from the company to the mediator, that will
14 be fine. Because they're not willing to give me, you know,
15 money." The pirates were going to give him money. He got
16 somewhere between \$30,000 and \$50,000. He's just hoping to
17 get a little more.

18 The ransom was dropped in hundred-dollar bills.
19 That's 1-1 N. The company paid out \$5 million to this pirate
20 organization because of the hard work of this defendant. He
21 took that money and he deposited it in a bank, where he
22 opened an account. What kind of NGO volunteer gets \$37,000
23 from the pirates? Once again, the defense opening was he got
24 that money from tribal elders and it was a mistake.
25 Absolutely no evidence in the record, ladies and gentlemen,

1 of that.

2 "I got paid by the pirates for negotiating the
3 German vessel Marida Marguerite." That's what he told
4 D'Amico, that's what he told Coughlin when he met with them.
5 He's not a volunteer in an NGO. And if he was an NGO, why
6 would he refuse to help the Americans on the Quest, right?
7 If you're an NGO you should help everybody, because you're
8 there to help. But instead he told Agent Coughlin, "Yeah, I
9 looked at it for two days. No, not going to do it." That's
10 not an NGO.

11 The defendant also claimed he was a hostage on the
12 water. "I think they're afraid I may not come back; if I go
13 down I may not come back. Really it's kind of a confinement
14 for me, too." But when you look at Government's Exhibit 126,
15 "The owners neglect this. I will simply go ashore with a
16 clean and clear conscious." That doesn't sound like a
17 hostage.

18 Call 55: "You're always on the ship, is it, or" --
19 "Well, sometimes I go out in the daytime and sometimes in the
20 evening, but I come back." That's not a hostage. Then, of
21 course, we have him leaving for ten days. "Dear Rajesh: I
22 have left the ship this morning. I don't know if I'm coming
23 back. Anytime you need my help, just give me a call.
24 Regards, Ali." Doesn't sound like a hostage.

25 And the German police on the ship found the vacation

1 slip, five days of vacation for Shibin. Now, remember, in
2 the defense opening this was forced medical leave. No
3 evidence in the record of that. And look at the names of the
4 people that went on vacation with Shibin -- or at the same
5 time.

6 Faraad Dheere -- he's on that SAMI list. He shared
7 in the profits.

8 Bashir Dumad -- I would argue Bashir Dumad -- he was
9 on that list and got money. And, remember, Jilani told you
10 that Bashir Dumad was there in that hotel with them as they
11 were all chewing khat when Shibin was off the ship. Kind of
12 makes sense he's going on vacation with them. And when you
13 look at Government's Exhibit 1-29, that SMS or text message
14 was the same day. He gets vacation leave, and he goes on
15 vacation that same day, June 30th.

16 They also recovered these pay sheets. You had to
17 cover your expenses on your boat. Here we have Liban
18 Abdurahman. He had \$8,100. And then, of course, we have
19 Shibin, and he has a \$200 debt. Hostages generally don't
20 have to pay debts -- that doesn't make any sense -- with
21 other pirates like Liban Abdurahman. Do employees have to
22 cover their debts sometimes? Sure, they do.

23 Call 967: "I will be the last person who will get
24 out of the ship, because when I get out of the ship I'm going
25 to call you to tell you that all the pirates are out, all the

1 arms and ammunition, including explosives, are cleared out of
2 the ship. Then I will be the last man to go and get into a
3 skiff and depart the ship."

4 If you're a hostage and you're going to be the last
5 person off the ship then why not go home with the captain,
6 the chief and the engineers from the Marida Marguerite? I
7 mean, if he's the last guy off the ship the only people
8 leaving the ship are the pirates, so you would have been
9 hopping on with the other pirates.

10 Now, of course, Chirag Bahri said that he was
11 hopping on that ship with a bag that the captain and the
12 chief said was full of money and had a laptop, but he's not a
13 hostage at that point. He never was.

14 And look at his final demands, Government's 174:
15 "We hereby agree that we will leave for good the vessel after
16 you pay us \$5 million."

17 And from Government's Exhibit 1-1 C, none of the
18 real hostages -- those were the Indian crewmen -- got a
19 single cabin for themselves cleaned by the crew of the Marida
20 Marguerite. Remember, we had testimony from multiple
21 witnesses that said, "If the defendant said, 'Clean my
22 cabin,' it got done by the crew." That's a member of the
23 pirate organization.

24 This is the same guy who blew through half his
25 pirate money in less than two months -- \$18,000. And,

1 remember, he had told Agent Coughlin that he had lost his
2 job -- and, I think, D'Amico -- that he had lost his job with
3 the oil company 18 months ago. But look how he's spending,
4 right? He deposits the pirate money on January 8th of 2011,
5 and in less than two months he's blown half that money. It's
6 just flying out of his account. That spending is
7 inconsistent with being a nonprofit person, with being a
8 free-lance journalist person, but it is consistent with a
9 pirate negotiator who knows his next big score is just off
10 the horizon.

11 And he admitted to Agent Coughlin that he'd spent it
12 all; that there was no money left by the time the FBI
13 arrested him. Remember from the wire the defendant's motto
14 is survival of the fittest. That's the rule in Somalia.
15 "The commander is right beside me. He's listening to what
16 I'm saying. He's worried I may manage some kind of money out
17 of this." When things are not going his way the defendant
18 puts his interests above everybody else's. That's survival
19 of the fittest.

20 At the end of the negotiations he says, in 967,
21 "When I go back to my normal life I will be able to send you
22 e-mails and give you episodes of my stay on board. Plus the
23 leaders -- you can recognize their names and faces."
24 Everything is a bonus, and he says it without condition.
25 He's trying to squeeze more money out of the company because

1 there was a condition.

2 Earlier in call 967 he says, "Please, can you do
3 something with the air drop? You know, if it's in my name, a
4 gift from the company to the mediator, that will be fine.
5 I'm not a lion, I'm a gazelle. I'm like the crew, you know."
6 Of course the offer to help the company is tied to a payment.
7 He's just trying to squeeze more money out of them.

8 And it's important in Government's Exhibit 1-48 A,
9 which was the other text message, where he says, "Mike,
10 either pay the pirates or initiate the rescue operation. I
11 will cooperate without reservation." The date?
12 September 13th, 2010, what was going on then? It's one week
13 before he's replaced by Leon. He can see the handwriting on
14 the wall. He's going to take his ball and go home because
15 he's not happy he's getting replaced.

16 And he does it again, ladies and gentlemen.
17 Remember Oleg Dereglazov? "The defendant approached me and
18 offered me \$100,000 if I could move the ship and I could turn
19 it into a mother ship." That was on the first day of
20 testimony, ladies and gentlemen. This conversation was
21 during the first week of December, when Leon is down between
22 5 million and 5.6 million. It's just about done. Remember,
23 Captain Makane testified that he had talked to Leon and Leon
24 said, "We're just about done."

25 The defendant has another plan. Let's turn it into

1 a mother ship. That will fix Leon. We can make more money.
2 "I told him 'You could pay me a million dollars; I still
3 can't move the boat.' I was not going to turn the Marida
4 Marguerite into a pirate ship." The chief is just not going
5 to do that.

6 Where does the defendant go next? "The reason I
7 call you now is to officially tell you that Leon has been
8 stopped from contacting you. I mean, he's not in charge of
9 the Marida Marguerite negotiations. Speak to the captain."
10 "The commander has changed Leon with Ali, so Ali will be
11 negotiating with you now." That's his next move on December
12 8, the end of the first week of December, right? If he can't
13 turn it into a mother ship, "I'd better be a negotiator so I
14 get paid."

15 In the defense opening he could not negotiate the
16 Quest because he was going on this vacation to Zambia. As
17 Leon proved, though, you can negotiate using only a phone,
18 right? He said it was a three-way call he was doing with the
19 captain of the Marida Marguerite. There was nothing in the
20 record, no evidence the defendant was going on vacation, only
21 that he applied for a visa before the Quest was hijacked.
22 And he did not book the ticket until after the U.S. Navy
23 retook the Quest and the ransom opportunity was lost. And
24 the defendant could have just canceled his vacation. Many
25 people do that because they have to work. That's normal,

1 probably even for pirates.

2 This is the same guy who, not once but twice,
3 removed a more experienced negotiator from the negotiations,
4 and he's saying he's not part of this organization? The same
5 guy who lost his job with the oil company, the same guy who
6 used his pirate money to get a bank account, the same guy who
7 the Quest pirates say was their negotiator, the same guy
8 whose personal cell phone number was given to the Navy as the
9 negotiator for the Quest by the pirates, the same guy who
10 received a text that Sarin-daaq had taken the Americans, the
11 same guy who did all of those Internet searches that would
12 have allowed him to conduct the ransom of the Quest, the same
13 guy who did all those same searches on other hijacked ships,
14 like the Italian one, the same guy who told the FBI two
15 different stories about why he did those searches.

16 Agent D'Amico was "personal curiosity," Agent
17 Coughlin was, "I was seeing if I wanted a job, and I decided
18 not to take it." This is the same guy who has put forth
19 ideas that he's an NGO, a hostage, and suggests he's a
20 free-lance journalist who is just trying to help out with the
21 piracy problem. And he told the FBI that he would not help
22 four American citizens because, as he now suggests, he was
23 going on a vacation? Those two things just don't make sense.

24 So how does the defendant get the job as the Quest
25 negotiator? Leon told us. He said, "Mike, let me tell you

1 about pirates. They don't care about the company. The
2 problem is the pirates are going to get what they want from
3 the ship which is under their control. Otherwise, they don't
4 care about anything they offer unless they get the money."

5 And the defendant confirmed this in call 231. "Most
6 of the pirates are youngsters. Their motive is not a
7 political motive, it is not a religious motive, it is just a
8 money motive." For the defendant it is not about the crew.
9 They are just money. That's all he sees them as, dollar
10 signs. That's why he ups the ransom to \$6 million at the end
11 of the negotiations, because he is going to force the deal to
12 close and be the one who closes the deal.

13 Who is the commander going to pick at that point? A
14 strong negotiator, one who is going to get the job done. No
15 wonder he forced Leon out, because he's a hero to those
16 pirates, by his own definition on the wire. "If, for
17 example, I were" -- "if I managed to finish the settlement
18 between the owners and the pirates with, for example, more
19 money than the ones that other mediators have managed for the
20 ships they were dealing with then I will be called hero."

21 Of course, Liban Abdirahman and Hilaac are going to
22 use Shibin on the next boat they get, which is the Quest.
23 That was only about seven weeks later. So just because he
24 has a visa for Zambia and no plane ticket there is no
25 evidence he was not right in the middle of getting ready to

1 negotiate the ransom for the Americans when the Navy retook
2 that ship -- no evidence.

3 The defendant, the evidence has shown, was not
4 truthful with the company, with the crew, or with the agents
5 from the FBI. None of his stories make any sense in the view
6 of the evidence that you've heard from the stand.

7 Call 92: "Take care. I always take care of them.
8 Look, you may not believe me now, but when the ship is free
9 and when they are free, too, they will tell you. You will
10 know that's what kind of person I am." The defendant thought
11 he would be long gone when the crew would be able to say what
12 kind of person he was. You had an opportunity to do that
13 from the stand with five of them. The evidence showed what
14 he did to that crew. It shows what kind of person he is.

15 When the defendant started as a pirate he controlled
16 all of the information and kept the company in the dark.
17 That's how these negotiations work. The company needs to be
18 afraid for the crew. They need to be pressurized to pay more
19 money if it's going to work. But once you leave the crew
20 it's a totally different situation. They're the ones that
21 told you what kind of person he is. That crew is just money
22 to him. He does not care what happens to them as long as his
23 organization and he himself get paid.

24 When the defendant was confronted about his role in
25 the Quest he hid behind the phone. He said it was for

1 personal curiosity, or, if it wasn't for personal curiosity,
2 "Maybe I thought about doing it; maybe I thought about not
3 doing it." But to the defendant the reason he's doing those
4 searches are Scott, Jean, Bob and Phyllis. They're no
5 different than those Indian crew members. They are just
6 money to this defendant, and if that boat he had gotten
7 back it would have been business as usual at that point. And
8 when he realized he couldn't make any money out of the Quest
9 because the United States Navy took the boat back, he left
10 Somalia. And when he was caught he had two different stories
11 to try and cover his tracks. It's just that simple, ladies
12 and gentlemen.

13 Now, Mr. Hatch told you at the beginning of this
14 case that it was going to take you around the world, and it
15 did take you around the world. Unfortunately, it was a very
16 sad trip. When you treat people like money, people are going
17 to get hurt. The defendant said what his definition of
18 courage was; that these are people that go out with guns and
19 rocket launchers and attack ships and take them. He says on
20 the wire that it 's survival of the fittest. That is not
21 courage, that is cowardice. Courage is working together.
22 Courage takes many forms. It can be as simple as coming to
23 an American court and testifying in another language. That's
24 very hard to do. It can be as simple as coming to an
25 American court and telling about your relatives who have

1 passed away. It can be as difficult as going to Somalia and
2 arresting a pirate. You heard from Agent D'Amico that it
3 wasn't clear they were going to get him out of this, but he
4 was willing to go and do that because it is just that
5 important.

6 Courage is working together as a crew. No matter
7 what this defendant threw at the engineers of the Marida
8 Marguerite, they persevered. They made water to survive.
9 They fixed that boat and got out of there. That's the
10 difference between pirates and pirate organizations like this
11 man belongs to and the rest of society. It's going to take
12 one world to get this done; Germans, Ukrainians, Indians,
13 Americans. And as the evidence has shown beyond a reasonable
14 doubt, this man is guilty of being part of a pirate
15 organization. Send a message to him that this behavior will
16 not be tolerated, and send a message to the organization that
17 if you work for the pirates you are not beyond the realm of
18 justice. As Mr. Hatch told you in the opening, it is
19 priceless.

20 Thank you for your time, and please listen to
21 Mr. Broccoletti now.

22 THE COURT: We'll take a five-minute recess, ladies
23 and gentlemen, and come back to hear Mr. Broccoletti. We
24 need a break. I don't want to interrupt his argument.

25 Everyone please rise while the jury retires.

1 (The jury withdrew from the courtroom.)

2 THE COURT: We'll take five minutes.

3 (A recess was taken.)

4 THE COURT: Please remain standing.

5 Bring in the jury, please, Ms. Richardson.

6 (The jury entered the courtroom.)

7 THE COURT: You may be seated. Let the record
8 reflect the entire jury has returned.

9 All right, Mr. Broccoletti.

10 You've used 57 minutes.

11 MR. DEPADILLA: Thank you, Your Honor.

12 THE COURT: Okay.

13 MR. BROCCOLETTI: May it please the Court, counsel.

14 I'd like to thank you for sitting with us for two
15 weeks. It's been a significant inconvenience to you and to
16 your lives. I recognize that. Everyone in the courtroom on
17 both sides of the aisle recognizes that. It's the greatest
18 service that you can do, as the Court has told you. It's the
19 greatest service that you can do as a citizen, to sit on a
20 jury in judgment of a fellow human being, whether you be an
21 American or whether you be a Somalian. And I know that's
22 very difficult for you, and I thank you for taking the time
23 and listening to the hard, difficult evidence.

24 I would hope that nothing I have said during the
25 course of the trial, I would hope that no questions that I

1 asked during the course of the trial, I would hope that no
2 comments that I made during the course of the trial were
3 offensive to you nor towards the victims of these crimes.
4 Because clearly there are crimes, and clearly there are
5 victims. There is no question about that. Mr. DePadilla is
6 absolutely right.

7 And it's very difficult as a lawyer, as I'm sure you
8 can imagine, as it's difficult for a juror, as you, to be
9 able to sort through this and to go through this. And,
10 ladies and gentlemen, I've been doing this for a long time.
11 This is a tough case. No if's, and's or but's. It's a tough
12 case for me; it's a tough case for you. And it's a tough
13 case for you because you've had to be able to listen to
14 things, and you're going to now be called upon to sort
15 through the evidence. You're now going to be called upon to
16 sort through the facts and the circumstances as you find them
17 and separate the very deep and troubling emotions and anger
18 that you must have as a result of what happened to both the
19 crew of the Marguerite as well as to the families on the
20 Quest. And that 's a difficult thing for you to do, but, as
21 Judge Doumar has explained to you at the beginning of this
22 case when he explained to you the history of a jury and the
23 significance and importance of a jury, we are judged as a
24 society by how we judge those who are the lowest, who have
25 the least, who are not from this country.

1 Our core values as a country and our core values as
2 a jury are devoted to the rule of law and, as Mr. Hatch said
3 at the beginning of the case, to justice. Because that's
4 what we're here to see, justice for all concerned in this
5 particular courtroom and in this particular case. And it
6 would be so simple, as I said to you in the opening, for you
7 to just throw the key out and say, "Why are we even looking
8 at this case, the evidence is so overwhelming? Why are we
9 even considering all these facts? Why are we listening to
10 that lawyer who can't operate the computer system? Why are
11 we doing these things when we know what the facts are?" But
12 you as a jury are charged with the task of determining what
13 those facts are, putting aside the emotion, putting aside
14 what anger you may feel about what happened to these people,
15 and judging what the facts and the circumstances are in this
16 particular case.

17 And, so, from the beginning I'm telling you this is
18 a tough case. It's a tough case for you because you have got
19 to rise above that level of emotion, because you have got to
20 rise above that level of saying, "Well, he's just a
21 Somalian." You have got to rise above that level of saying,
22 "Well, he's just this person from another country that
23 doesn't even speak our language." We are better than that.
24 You are better than that. And that's what makes this country
25 so great, and that's what makes you as jurors, each of you --

1 you weren't just picked at random. We had, what, 80 people
2 that were here? There is something about you as an
3 individual, about your background, about your history or
4 about your characteristics. There's something about you as a
5 person, whether it be your education, whether it be your
6 employment, whether it be your family, whether it be -- what
7 you bring to this table is special. What you bring to this
8 courtroom is special. Each of you as an individual is
9 special, and each of you as an individual must vote on this
10 case.

11 Collectively, the Court will tell you, you as a jury
12 must reach a verdict that is unanimous on each and every
13 count. However, each of you individually is tasked and is
14 charged with the responsibility of keeping your own moral
15 conscience, keeping your own fiber, keeping your own strength
16 as to what you view the evidence to be. And, so, each of you
17 individually are judges, as Judge Doumar has told you.
18 Collectively, you as the jury are the judges of the facts,
19 but each of you individually bear that strength, that
20 responsibility and that duty, and I ask you in this
21 particular case to apply that, as difficult and as hard as
22 that may be.

23 I'd also like to take this opportunity to
24 congratulate the government, all these four men sitting here
25 and all the agents that are involved. They've done a

1 magnificent job in assembling all of the wiretaps and the
2 phone records, traveling to Somalia, interviewing the crew,
3 all of those things. It's a very difficult case for them to
4 put together because it does come from all four corners of
5 the world. And I would like to think that we are all
6 professionals in this building, so when you see counsel
7 talking amongst each other there's no animosity. I mean
8 there's no anger between us. We're professionals, and I
9 would like to think that we act as professionals and have
10 treated each other as professionals.

11 Despite the fact that they have done a magnificent
12 job in assembling the evidence, you have to individually
13 judge what that evidence is and determine whether or not that
14 evidence is sufficient beyond a reasonable doubt to conclude
15 both of these cases. And Mr. DePadilla during the course of
16 his arguments to you has taken great pains to put these cases
17 together and basically to have the train, have the engine and
18 the caboose. And these charges and these cases drive each
19 other and are connected to each other, but they're not.

20 As the Court will tell you in the instructions, you
21 are to consider each count in each case separately. And just
22 because there may be facts and circumstances within one case,
23 that does not taint, spill over and affect your determination
24 on the other cases. Each one has to be determined
25 individually. And why do I say that? Well, because as we

1 saw through his presentation on the computer, so many
2 recitations to Hilaac, to Liban, and if they're in the
3 Marguerite and therefore they're in the Quest, and,
4 therefore, if the defendant was on the Marguerite therefore
5 the defendant is on the Quest. Well, two plus two doesn't
6 always equal four. And don't think that because certain
7 circumstances are present in the Marguerite they're similar
8 and of the same nature and character that are in the Quest.

9 And I want to start with you with the Quest. That's
10 where we finished, and that's what's probably freshest on our
11 minds. And then from that then we'll turn to the Marguerite.
12 And I promise I will try not to take 57 minutes, because
13 you've heard us for two weeks.

14 The case revolves so much about these phone records
15 and the texts and things of that nature because that's really
16 what the -- those facts and those circumstances are
17 indisputable. In other words, I can't hold up this phone
18 record and cross-examine it. It's a document; it exists.
19 These calls were made or these calls weren't made. It's
20 different from a person, because you can determine the
21 credibility of an individual. And we're going to get into
22 that in a few minutes. But when you look at the phone
23 records they're objective. They're unbiased. They don't
24 lie. They've got no dog in the hunt, so to speak.

25 And I urge you -- Government's Exhibit 2-10 H -- to

1 study this document carefully. Because while there may have
2 been a number of different conversations that occurred -- or,
3 excuse me -- a number of different phone calls that were
4 made, as I asked the last agent that testified, Mr. Blitzer,
5 how long were these calls for? All right. The first call to
6 Khyr on the 17th of February -- 77 seconds. Do you make an
7 agreement to hijack a boat and then agree to be the ransom
8 negotiator for that boat in 77 seconds? I don't care if
9 you're from New Jersey, New York or Philadelphia. You can't
10 talk that quick. There's just no way to be able to make such
11 an agreement in that short period of time. But yet if this
12 man is the key player, if Khyr is a key and the linchpin
13 among all of these, where are the other phone calls, okay?
14 There is one other call to him on the 19th which lasts 80
15 seconds, which is two days afterwards, which is consistent
16 with what the defendant's statement was, "I called him two
17 days later." But other than that there's really nothing.

18 There are texts that come in from Haji Khyr. And
19 what are those texts? "Uncle, call me." We had a lot of
20 laughs about "uncle" today, and we'll talk about that in a
21 few minutes. But, "Uncle, call me." Does he call him? No.
22 Haji Khyr on the 22nd: "Uncle, please send me an easy ten
23 now for the radio that I bought." On the 23rd: "Uncle, were
24 you hurt this morning?" No responses from the defendant, no
25 phone calls from the defendant. Certainly no texts that

1 contain any information about piracy. None of those words
2 are connected, or codes or anything that involve piracy.

3 Okay. The phone call says, "Liban." How many of
4 these were completed? You have one call on the 20th -- you
5 have two calls on the 20th, one for 26 seconds, one for 23
6 seconds. Is that voicemail? Do they even have voicemail in
7 Somalia? I don't know. The agent wasn't able to testify to
8 that. Another call for 38 seconds. Another call for 35
9 seconds. 92 -- excuse me. 136 seconds. That's the longest
10 call that's there.

11 What can you talk about in 36 seconds? What can you
12 talk about that establishes the depth and breadth of this
13 particular conspiracy and these particular acts? And if
14 these calls are indicative and corroborative and supportive
15 of the fact that these calls occurred, these calls are going
16 to be a lot longer. They're going to be substantive.
17 There's going to be much more that's discussed within that,
18 much more time spent that's within that. It's not there.

19 All right. How about to Hilaac? Well, we've got a
20 bunch of calls that are tried to be made to Hilaac; 100
21 seconds, 160 seconds -- which is the longest one, according
22 to the agent -- 92 seconds. Again, these are the records
23 that are unbiased and objective and that don't lie, and do
24 these records, in your mind, after you conclude or consider
25 all of the evidence -- do these records to you demonstrate

1 the existence of a conspiracy that this defendant entered
2 into to be the negotiator on a pirate ship? I'd suggest to
3 you that they do not. They're all members of the same clan.
4 They're all members of a subclan. Apparently, that's all
5 there is to talk about in Somalia, is piracy. I mean, nobody
6 else seems to be talking about anything that's over there.
7 None of the news reports seem to be about anything but
8 piracy. So what else are they going to talk about, their
9 family? We don't know. It's pure speculation to think that
10 you know and that the government knows what's in those phone
11 calls -- pure speculation. It's not like on the Marguerite,
12 where you actually have the phone calls that you've listened
13 to. Pure speculation.

14 With respect to the text messages, you have those
15 here. "Uncle, call me." This is Liban. Nothing about
16 piracy discussed in any of the texts, things that you can see
17 and read and that are objective and that are unbiased.

18 Then you look at Defendant's Exhibit 10, which are
19 all the other phone calls that are made during the course of
20 this time. And on the 17 th and on the 18th, on the 19th
21 he's calling a lot of people, people that have nothing to do
22 with this case, people whose names have not been introduced
23 at all in any way, shape or form in anything. So the
24 defendant is using his phone to make many, many, many, many,
25 many phone calls, and you'll see them in Defendant's Exhibit

1 10.

2 Likewise, in Defendant's Exhibit 9 you'll see the
3 searches that he made, the searches that he made about the
4 different news articles and ships and things of that nature
5 that go back weeks before the Quest was taken. And
6 Mr. DePadilla says, "Well, look how significant it is that
7 he's looking for the satellite phone for the Italian ship,
8 because the satellite phone is the way that you contact the
9 ship." All right. Where's the contact? Did he ever call
10 the ship? You heard from several of the people that the way
11 that the pirates operate in terms of the negotiator is that
12 the negotiator is chosen after the ship is seized because
13 then the negotiator talks to the ship, tells the ship captain
14 where to go, and starts to determine what the value is. Do
15 you see any phone calls from the Catalina -- the Italian ship
16 to the defendant's phone? You see none. You see nothing.
17 You see no connection whatsoever. You see a random search.
18 You see it -- whether it be curious, whether it's a morbid
19 curiosity, whether it's a news report, whatever the
20 circumstances may be, you see these searches for these
21 articles, but you see absolutely no connection and no
22 following up on any of that. There's nothing that
23 demonstrates to you in this evidence that any of those
24 calls -- or, excuse me -- that any of those searches related
25 to any attempts to contact any of those people or any of

1 those ships or anything -- anything.

2 And, so, Defendant's Exhibit 9, which has been shown
3 to you, I would suggest to you is indicative of what the
4 defendant's time spent was, whether it's time spent twiddling
5 his thumbs, whether it's time spent doing 111, whether it's
6 time spent doing Facebook. Whatever the circumstances are,
7 it's indicative of the time spent, because there's nothing to
8 corroborate, confirm or connect any of those ships to any
9 particular activity.

10 But we've got Sarin-daaq, and we've got Jilani, and
11 the only evidence that connects this defendant, direct
12 evidence that's been introduced into this record with
13 anything to do with the Quest is Jilani -- the only evidence.
14 Jilani, who how many times said, "God bless their souls"?
15 Jilani, who was the religious man and the psychic, who
16 boarded the boat to pray for everybody that was on the boat.
17 Jilani, who was the pirate without a gun. Ever heard of such
18 a thing; a pirate without a gun? Jilani, who took the stand
19 and testified that one day on the beach in Garaad, when they
20 were in the Yemeni Dhow, he had a conversation with
21 Balixule -- who obviously is not here and obviously has not
22 testified -- that Balixule told him that the defendant was an
23 investor. That's it. That's the only direct link that you
24 have between this defendant and the Quest in any way, shape,
25 or form.

1 It's up to you to determine the credibility of
2 Jilani. It's up to you to determine the believability of
3 Jilani. And "credibility" is just a lawyer's word, and the
4 Court will instruct you at a later point about how you do
5 that, but there's no rocket science with that. There's no
6 magic to that. You do that every day in your lives. You do
7 that when you talk to your sons and your daughters. You do
8 that when you talk to your significant others. You do that
9 when you're at the job and you're talking to people. They
10 may tell you something, but do you believe it? Do you
11 believe it? And that's what we do as people. And what you
12 do as jurors is no different than that. Do you believe that
13 guy? Do you have the trust, the faith, the confidence in
14 that man, Mr. Jilani, and what he said, to be able to find
15 that this defendant, beyond a reasonable doubt, was an
16 investor on that ship? Because that's the only evidence that
17 links him to the Quest, Jilani's statement that he was an
18 investor. You don't have Balixule; you don't have anything
19 else.

20 Yet you have today Juguuf. And Juguuf told you who
21 these investors were, and Juguuf told you about the meetings
22 with the investors, and Juguuf told you that the defendant
23 was not present at any of those meetings. But I'm sure the
24 government will stand up here and say, "Well, Juguuf is not
25 believable." Why? Because he's not a government witness?

1 Just because you've suddenly become a government witness do
2 you become believable? Do you become cloaked with some type
3 of recognition of trustworthiness? Do you wear a badge that
4 says, "I'm honest and I'm a government witness?" I don't
5 think so.

6 And think about that. You have Jilani, you have
7 Sarin-daaq, that have testified for the government with a
8 plea agreement, you have Juguuf, who has testified for the
9 defense with a plea agreement. I can't do anything for
10 Juguuf. I can't file a motion. I can't cause the Court to
11 consider a reduction in his sentence. He's got absolutely
12 nothing to gain by testifying for the defendant -- absolutely
13 nothing to gain. I can't do anything to help him.

14 Jilani and Sarin-daaq are different, though. You've
15 seen the plea agreements, you'll be able to read the plea
16 agreements, and you've heard them testify. In order for the
17 Court to even consider a reduction of sentence -- and it's
18 always up to the Judge. Let's get this straight. It's
19 always up to the Judge as to what happens in a case, but even
20 before the Court even considers it they have to satisfy the
21 government to file that motion to reduce their sentence.

22 So do you believe them, and do you forget about
23 everything that they've done in their lives? And do you
24 forget about what they brought onto that boat? And do you
25 forget about the harm that they caused to the people on that

1 boat? And do you forget about the violence and the
2 activities that they engaged in? Do you forget about all
3 those things when you consider them as witnesses? Do you
4 forget about all those things when you consider them in terms
5 of their trustworthiness? Do you forget all those things
6 when you consider their believability. No, you don't do
7 that, because that's what you bring to the table as a person,
8 that's what you bring to the table as a witness, and it's no
9 different from what you're doing today as a juror as you sit
10 and make that determination.

11 And, so, really stripped down to its bare essence,
12 stripped down to the ultimate common denominator, the only
13 fact that's before you that allegedly connects this defendant
14 to the Quest is Jilani. Sarin-daaq offered you nothing.
15 Sarin-daaq offered you absolutely nothing. He, being the
16 commander of the boat, wouldn't he be in a position to know
17 the best of everything? Wouldn't he be in a position to know
18 the best of who was what and who did what and what role
19 people played? Did Sarin-daaq say that he was an investor?
20 No. Did Sarin-daaq say that he was behind the scenes pulling
21 the strings? No. Did Sarin-daaq say that he had an
22 agreement with him before he left the shore that he was going
23 to be the negotiator? No.

24 Sarin-daaq added nothing to any of those equations.
25 Sarin-daaq added nothing to the ultimate decision about what

1 links this defendant to that. And, so, what you have to
2 understand and consider, as I'm sure that you will do as you
3 parse through the evidence in the case, is what corroborates,
4 what supports Jilani.

5 Well, the government is going to stand up here in a
6 few minutes -- or maybe tomorrow morning -- and say, "Well,
7 look, of course, it's corroborated. Here's Hilaac; he's in
8 his phone book. Here's Mohamud Haji Khyr; he's in his phone
9 book, he makes phone calls. Here's Liban; he's making phone
10 calls." Does that corroborate it? Or do you even know what
11 those phone calls are? Or do you even know what those
12 circumstances are? There's no supporting corroboration to
13 allow you to have the trust, the faith, the confidence into
14 what Mr. Jilani said when he testified.

15 And if there was never a better evidence of what a
16 jury instruction on credibility is, he's the poster child for
17 that instruction. And why do I say that? Because the Court
18 is going to tell you at the conclusion -- when we finish with
19 this that you judge the demeanor and character of a witness,
20 their interest in the outcome and bias in the case, how they
21 look on the witness stand, how they appear to you, what they
22 say and how they say it. It's not just the message, it's the
23 messenger as well. And did you notice when he testified on
24 direct he was calm, he was stretched out, he was relaxed, he
25 was comfortable? He was looking good up there, wasn't he?

1 As soon as I asked him the first question, what happened to
2 his body language? And we talked last week, I think it was,
3 about Indian and Somali body language. We laughed about it a
4 little bit. Maybe the Judge was right. Did you see his body
5 language? Did you see the way he changed? His arms
6 clenched, his hands clenched, and he was a completely
7 different person. Why? Was I offensive or rude to him? Did
8 I say something that was wrong? Or did I ask him difficult
9 questions that exposed him for who he was?

10 What is probably the most common and significant
11 human -- what motivates us most? What motivates us most as
12 human beings? Our freedom. You can always work, you can
13 always find a job to make money -- maybe not in this economy
14 as much, but you would hope so. But you can always get out
15 there every day and do something different and find work or
16 make money or meet friends, but you can never replace that
17 day of your life, that day of your life that is gone, that
18 day of your life that can never be captured again. And every
19 day Mr. Jilani sits in that jail a day of his life is gone.
20 And what motivates human beings the most? What motives
21 Jilani the most? Freedom. And how does he achieve that
22 freedom? By dropping a dime on Shibin. Easiest and simplest
23 way.

24 And, by the way, he wouldn't ever talk to his other
25 inmates about this case, would he? He would never, ever

1 discuss this case and Mr. Shibin with the other Somali
2 pirates that he's locked up with, would he? If you believe
3 that, then I've got a nice piece of oceanfront property on
4 the Indian Ocean on the East Coast of Somalia to sell to you.
5 You know better than that. We all know better than that.
6 What else are those guys talking about? They're talking
7 about this case. They're talking about Shibin. They're
8 talking about the lawyers. They're talking about the judges.
9 They're talking about everybody. And the beauty of it is
10 nobody can understand it. They can be back there talking
11 about everything, and when people are back there speaking
12 English the marshals can hear them, but when they're talking
13 Somali nobody can have a clue as to what they're saying.
14 They have free rein back there. So, please, I ask you to
15 carefully consider Jilani and what he said and the method and
16 manner in which he said it.

17 Juguuf. All right. Juguuf testified today. And
18 here's where you have to consider the big picture. In
19 Juguuf's testimony today he said, unequivocally, "I was not
20 going to choose the negotiator. I had no say over that. I
21 wasn't even the commander of the ship." So the government
22 read -- or the government introduced evidence through Agent
23 Coughlin that he had made statements in the past that were
24 somewhat different. Well, first of all, those statements are
25 in Somalian. Do we have the Somalian interpreter here to

1 tell us what actually was said? We also know there's
2 variances in language, and words have different types of
3 meanings. We also know that Agent Coughlin subscribes
4 different meanings and his own interpretations to those
5 words. He's not lying. I'm not suggesting that. The guy
6 has done a tremendous job and has worked countless hours -- I
7 can't even imagine what this case is. But he's an agent, so
8 he has a perception and an idea about what this case. He has
9 a perception and an idea about what the facts and the
10 circumstances are. And, so, when you have words that are
11 susceptible to many different interpretations you, through
12 your own mind, in your own lens, in your own vision subscribe
13 to that particular idea.

14 But what did, really, Juguuf say? Juguuf told five,
15 six different stories about whether or not the defendant was
16 a negotiator, was not a negotiator, was going to be a
17 negotiator, had agreed to be a negotiator. And when was he
18 saying those things? Juguuf was saying those things while he
19 was cooperating with the government. And what do those
20 statements demonstrate to you? Those statements demonstrate
21 to you an attempt by Juguuf to curry favor. They demonstrate
22 to you an attempt by Juguuf to come up with some evidence
23 that was incriminating, some evidence that was representative
24 of the defendant's guilt.

25 And Juguuf was trying to mold and to shape those

1 statements that he gave during the time that he was
2 cooperating to come up with that, but he couldn't. He
3 couldn't come up with those. He couldn't come up with a
4 consistent story. And why couldn't he come up with a
5 consistent story? Because it wasn't the truth. Because we
6 know that the truth doesn't change. We know that the truth
7 is consistent from story to story; that each time you tell it
8 you're going to tell it the same way. And he told five, six,
9 seven different stories. Why? Because he wasn't telling the
10 truth. He wasn't under oath. Today he was under oath, and
11 today he told you a consistent story. You judge his
12 credibility. You judge his demeanor. You judge the way that
13 he got off that stand and said, "Judge, tell me, when can I
14 talk to somebody? How do I know when the case is over?"
15 Little things like that, what people say and what people do,
16 cause you to believe or disbelieve them. That's your
17 decision as a jury.

18 But I have to point out you have to not just take
19 what was said, but you have to understand the context and the
20 realm and the big picture about how it was said, and not why
21 he said those things at that particular point but why he says
22 these things today.

23 Mr. DePadilla says, "Well, there's no evidence the
24 defendant was going on vacation." I disagree. When you look
25 at the defendant's visa, which is Government's -- I'm sorry,

1 I forgot the -- 2-8 E.

2 2-8 E. I ask you to really pay attention to that.
3 When you look at that particular visa application and records
4 from the airplane you'll see that the defendant made
5 application for the visa on the 18th of February, the same
6 day the Quest was seized. You have a business; you take your
7 money and you put your money into that business. Are you
8 going to sit there and watch and oversee and monitor that
9 business, or are you going to fly several hundred miles away,
10 not pay attention, not keep track? After all, you have to
11 recognize Jilani said by this point the defendant already is
12 an investor. By this point the defendant has already put his
13 money into the boat. By this point we already know that the
14 boat has gone out.

15 Is it logical to assume that the defendant would,
16 therefore, apply for a visa to go away while he's got a stake
17 in this venture that's out to sea? That's not logical at
18 all. Those two are completely inconsistent. If he's got a
19 stake in what's going on at sea, he's going to stay close to
20 the shore or Galkayo and he's going to monitor the situation.
21 But, no, he doesn't do that. He applies for the visa on the
22 18th.

23 And I disagree with my friend, Mr. DePadilla. On
24 the bottom of that visa application you'll see it says, "Why
25 are you going," or, "Why are you applying for this?" And it

1 says, "Visiting family in Lusaka." He's going to visit his
2 family. It takes time for the visa to be approved. The
3 defendant waits for that visa to be approved, and then he
4 buys the airplane ticket. You're not going to buy the
5 airplane ticket before you get the visa. Who knows if you're
6 going to get a visa or not. The fact that you may have
7 family doesn't necessarily guarantee it. Once the visa
8 itself is approved, then he buys the ticket, and then he
9 goes.

10 If he is involved in this, if he's part of this, he
11 knows that four Americans have just been killed. He knows
12 that his friends on that Quest have just been captured. He
13 knows that they're now in United States custody. Wouldn't
14 you stay in Zambia? Wouldn't you stay with your family in
15 Zambia, where really nobody knows where you are? But the
16 fact that he returns to Bossasso immediately tells you that
17 what was going on at that point in his mind was, I didn't do
18 anything. And there's evidence of his innocence; the fact
19 that he returns back home to go back to life. And then, when
20 you look at it even more, well, yes, he gave this statement
21 to the FBI, yes, he said all these things to the agents, and
22 so on and so forth. Isn't his cooperation evidence of his
23 innocence? Isn't the fact that he told them about his
24 luggage and consented to a search of the luggage innocence?
25 He has all these bank records with him. He has all these

1 documents that are contained in his luggage with him. Here
2 is a man who is advised of his Miranda rights not in one
3 language but two, not one time but six times -- I don't know
4 how many. He's advised all the time of that, and he
5 continues to talk to them. He even stops talking to them at
6 one point. The agents say, "We can't talk to you anymore,"
7 and he goes back and he talks to them some more. You need to
8 consider that in the context of the statements that he made,
9 and you need to consider that in the context of whether or
10 not it demonstrates that he's guilty of these offenses
11 regarding the Quest.

12 He told the agents that Khyr called him and two days
13 later he called Khyr and said, "No." And that's reflected in
14 2-10 H.

15 On the 17th Khyr calls him -- I don't know how he
16 could have called him before the Quest was taken, and I don't
17 know how he could have told him that the Quest was taken or
18 anything was taken because it hadn't been taken then, but on
19 the 17th Khyr calls him, and on the 19th there's another
20 phone call. So to the extent that the defendant's statement
21 was that two days later he called, it's corroborated with
22 respect to the particular phone message.

23 How the pirates ever knew that Sarin-daaq captured
24 Americans so that the defendant received that text no one
25 knows. No one can possibly know that. The Quest's

1 communications were gone. Cell phones weren't available. No
2 one could say that. And to say that this defendant was so
3 well connected he had gotten that doesn't make sense when you
4 consider the evidence that's involved in the case, when you
5 consider the fact that there is absolutely no communication
6 that's coming from the Quest with respect to this particular
7 defendant.

8 Counsel said, "Well, he's erasing contacts." Well,
9 as Judge Doumar asked earlier, you make a phone call, it
10 creates the phone call, but that doesn't necessarily mean
11 that you have to have a contact listed with that particular
12 phone call. We all know that from what our own phone records
13 are.

14 The Quest is a terrible case because four people
15 were killed. No question about it. It's a terrible,
16 terrible, terrible circumstance. But the evidence that links
17 this defendant to being involved -- as I told you at the
18 beginning of the case, in order for him to be guilty of that
19 he has to have entered into the conspiracy before the boat
20 left. The conspiracy is the agreement, and the conspiracy
21 makes them then responsible for what occurs on the boat. And
22 the evidence of the conspiracy comes from one man and one man
23 only and one statement that he was told by someone else that
24 this defendant was an investor. Ladies and gentlemen, that
25 is insufficient to any stretch of the imagination to conclude

1 that that is guilt beyond a reasonable doubt on that
2 particular case. The defendant was never on the boat, never
3 went to sea. It's insufficient, so I ask you to find him not
4 guilty with respect to that.

5 Let's turn to the Marguerite. Again, a very tough
6 and a very difficult circumstance. The Court is going to
7 instruct you about what the evidence -- excuse me, about what
8 the law is with respect to that piracy, and the Court is
9 going to define piracy to you. And one of the terms that the
10 Court is going to define to you of piracy is that the vessel
11 is taken on the high seas. No question about it, this vessel
12 was taken on the high seas. It was stipulated to. This
13 defendant, however, was never on that vessel at any time,
14 shape or form while that vessel was ever on the high seas,
15 ever. This defendant came onto the vessel seven days, ten
16 days after the fact -- after the fact -- while the vessel was
17 in the territorial waters of Somalia. That's up to you to
18 make that determination about whether that is sufficient
19 under the instructions that the Court is going to give to you
20 to establish that the defendant can be guilty of the piracy
21 of that boat.

22 And we're going to break down these charges one by
23 one, if you will. Let me, first and foremost, focus your
24 attention on that. And this case is a little bit different
25 than the Quest, because in the Quest you had Jilani say that

1 the defendant was an investor. So I've argued that that
2 evidence isn't sufficient, but there is some evidence that he
3 was involved before the boat went out.

4 In this particular case there's no evidence that he
5 was involved with the boat before the boat went out. You
6 have no evidence which links this defendant to any of those
7 people before the time that the ship was taken. The only
8 evidence that you have in the case is that the ship came to
9 shore, the defendant made a phone call, shows up on the boat
10 seven days later, ten days later, something of that nature.
11 So there's no evidence that suggests to you that the
12 defendant can be involved in the conspiracy to hijack the
13 Marguerite. Therefore, there's no evidence to show that he
14 was ever on the high seas, and so it's your determination to
15 judge those facts and apply them to the law that the Court
16 will give you about whether or not he can be guilty of
17 piracy -- piracy -- and the specific definitions that Judge
18 Doumar will give to you.

19 We talked for a few minutes before about human
20 motivations. I'd suggest to you that another very strong
21 motivator in our life is anger, anger and revenge, human
22 emotions which were very natural in many, many circumstances.
23 And I would suggest to you that the crew that testified was
24 angry. And they had every right to be angry. I suggest to
25 you that the crew that testified wanted revenge. They have

1 every right to want revenge for what happened to them. I
2 also suggest to you that those motives operate as a prism, as
3 a color on a lens from which they view the evidence today.

4 In other words, what they're looking at today and
5 the way they view the evidence today is colored through what
6 happened to them and their desires and their motives. And
7 they're angry at this man for being on that boat. They have
8 lumped him together with all one hundred pirates that are
9 present. He is responsible, from what it sounds like the
10 evidence is, for every bad act that occurred on that boat.
11 And I understand their being angry, and I'm not faulting them
12 for being angry, but let me just give you a couple of
13 examples as to what I'm talking about and how things have
14 changed.

15 He was a guard, and he carried an AK-47. The
16 captain said that, the chief said that, maybe somebody else
17 said that, but yet when they spoke to the German authorities
18 within days -- five days, I think the evidence was -- of the
19 time that they were released the question was asked to them,
20 "Were any of the negotiators armed?" And the answer was,
21 "No." No. Did they say at that point, "Well, he changed.
22 He was a chameleon, and he changed from a negotiator to a
23 guard, and he didn't have the gun when he was a negotiator,
24 but he did have the gun when he was a guard"? Did they say
25 that? No. They said, "No negotiators were armed." That's

1 then. But today things have changed, and they've changed
2 because, one, it's a year and a half later, and, two, because
3 they're looking at this man angry and upset.

4 Black September. The defendant was present. The
5 defendant was there. The defendant was translating for
6 things, but we know that Leon became the negotiator in
7 September. We know that Leon came onto the boat in
8 September. We know that Leon became the negotiator at that
9 point. But yet the defendant is the one that's responsible
10 for all the translations. The defendant is the one that's
11 responsible for communicating with everyone.

12 The captain: "I was tortured on July the 7th. I
13 was tortured on July the 7th, and the defendant was present,
14 and he was translating the torture demands. He was right
15 there. He didn't help me. He didn't stop me." Well, I
16 would suggest to you that that's directly in conflict with
17 the slip that was shown to you earlier by Mr. DePadilla which
18 shows that the defendant left on the 30th of June, and the
19 evidence was he was gone for eight days. The evidence was,
20 from the German authorities and from the phone records that
21 were presented to you, that the defendant did not come back
22 on the boat until after the captain had been tortured in that
23 way. So he's wrong. The captain is just wrong. Logical but
24 wrong.

25 And let me just go back to Jilani a second on the

1 Quest. I apologize. I just want to demonstrate to you why
2 you know that this man a not telling the truth. Because
3 Jilani told you on January the 15th the defendant came off
4 the German boat, and when he came off the German boat he had
5 lots of money and he flashed it around, and he flashed it
6 around, he partied, chewed khat, had a great time, and then
7 the defendant went back on the German boat again. That's not
8 true. We know that's not true. We know, number one, the
9 German boat was released in December. We know, number two,
10 the defendant never left the German boat but for that one
11 period in June. So when you think about Jilani and you think
12 about the facts and circumstances that he's asking you to
13 rely upon, think about just how wrong he is about those
14 facts. I apologize for going back to that.

15 But with respect back again to the captain, he's
16 just wrong about those dates of the torture. Likewise, when
17 they told you about Hobyo and the boat was being transferred
18 to Hobyo so that it could be turned over to al-Shabaab and
19 the defendant was present and the defendant was involved and
20 the defendant was giving directions and the defendant was
21 giving orders, well, look at the phone calls. Look at phone
22 call 253. And Mr. DePadilla referred to this earlier, and
23 when he referred to it he talked about how the defendant was
24 ordering him.

25 Well, this is a phone call between Rajesh, the

1 commander of the ship, and Captain Makane. The defendant is
2 not even there. He can't have ordered him to do anything.
3 Captain Makane: "The pirates have taken drastic action.
4 They've removed Ali from the negotiations. He is isolated."
5 Later: "Ali is not connected anymore. Ali is isolated on
6 board. They have even threatened him, and they have beaten
7 him, and I don't know what they are doing. Ali is in prison
8 in his cabin down below." The new pirate commander Osman:
9 "Ali is not working. We have taken his cell phone. He was
10 arrested."

11 He's not even there when the captain tells you
12 during the course of his testimony that the defendant was
13 involved in directing it to Hobyo. Again, he's angry.
14 That's understandable. He's upset. That's understandable.
15 But that doesn't mean that what he's recalling today is
16 accurate, because the facts that have been given to you, the
17 facts that are objective, the facts that are unbiased, the
18 phone calls, the texts, don't lie.

19 Well, the defendant said, "we" -- Mr. DePadilla also
20 talked a lot about that today. The defendant talked about
21 "we," and that "we" were in the context of things. Look at
22 Defendant's Exhibit Number 11. And this is the fax that was
23 sent out on the 20th of December. "To Mr. Mike: Here's the
24 commander's reply to your last fax. We will not allow the
25 crew to make phone calls. We will not be able to verify they

1 are calling. You kept us guessing. We are spending money."

2 This is what we've been talking about. I mean, this
3 fax demonstrates to you that the defendant is translating the
4 instructions that the commander is giving to him. Simple and
5 straightforward and foremost, why doesn't Leon ever have a
6 fax? The defendant continually asked for a fax is why,
7 because he needs to be able to translate those faxes from the
8 English to the Somalian to show to the commander. Does Leon
9 ever need a fax? He doesn't care about any faxes. He
10 doesn't need them whatsoever. And who is more responsible --
11 or, excuse me -- who is more respected is a better word -- by
12 the pirates? You heard the Indian crew talk about Looyan;
13 how Looyan was much more experienced than Shibin, how Looyan
14 was listened to, how Budea, who was one of the commanders of
15 the ship -- he wouldn't listen to Shibin. He wouldn't
16 respect Shibin, but he respected and he listened to Looyan.
17 Those are all facts and circumstances that you have to
18 consider when you consider what the defendant's role was.

19 Tough case. Tough case for me; tough case for you.
20 He's on the boat. It's him. He's making these phone calls.
21 He takes the money. He puts it in the bag. No question.
22 I'm not trying to blow smoke about those things. He did
23 that. That actually absolutely happened. The question that
24 you have to determine is you have to separate those facts and
25 circumstances from what the law is that the Court is going to

1 give to you.

2 In other words, the fact that he's on the boat --
3 does that mean that he's involved with hostage-taking? He's
4 on the boat. Does that mean he's responsible for kidnapping?
5 He's on the boat. Does that make him responsible for the
6 piracy after the boat has already been taken? These are the
7 tough legal questions that you're going to have to apply your
8 common sense and your intelligence to when you go back into
9 the jury room. Because that's what the law is, and that's
10 what the law requires you to do. It's so simple in this
11 case. It would be so simple for you to walk back there, get
12 the verdict form signed and walk out and say, "I've been here
13 for two weeks; this case is overwhelming." But I know you're
14 not going to do that. I know you're not going to do that
15 because I know you're committed. You took an oath. You took
16 an oath to yourselves; you took an oath to the Court. More
17 importantly, you took an oath to all of us in the courtroom,
18 all of us in the community, and that oath was to do your duty
19 and to apply the laws to the facts as you found them.
20 Despite the fact that this man is Somalian, despite the fact
21 that he comes from halfway across the world, despite the fact
22 he was on that boat when these hostage were tortured, you
23 have still taken an oath to apply the law to the facts as
24 best as you can under those circumstances. And I know that's
25 a hard thing to do, but think and listen.

1 Just because he's on the boat doesn't mean that he's
2 guilty of being a hostage-taker. Just because he's on the
3 boat doesn't mean he's guilty of being a kidnapper. He has
4 to do things, as the law is going to be given to you by Judge
5 Doumar, that allows you to jump -- not to jump but to reach
6 that particular conclusion, and I suggest to you the fact
7 that he's merely on the boat is insufficient to be able to do
8 that.

9 If you look at some of the instructions that the
10 Court is going to be able to give to you, the Court has
11 talked about credibility of witnesses, inconsistent
12 statements, and one of the ones that I want to talk to you
13 just briefly about -- and I promise you I'm almost done.
14 We'll get you out of here by 5:00, I promise -- is
15 credibility of witnesses and testimony of an accomplice. An
16 accomplice is Jilani. An accomplice is Sarin-daaq. An
17 accomplice is even Juguuf. "The testimony of an alleged
18 accomplice must be examined and weighed by the jury with
19 greater care than the testimony of a witness who did not
20 participate in the crime. That's just common sense. I mean,
21 that just tells you that's just common sense. These people
22 have committed horrible crimes. These people are pirates.
23 And, so, you have to be able to consider their testimony with
24 greater care than you would with, obviously, some of the
25 civilian witnesses that have testified.

1 The Court has talked to you about conspiracy in this
2 particular instruction called "Mental Status;" that, "In
3 order to show that the defendant became a member of the
4 conspiracy the government has to prove beyond a reasonable
5 doubt that the defendant knew the objects of the conspiracy,
6 that he joined the conspiracy intending to help or further
7 the objectives, and that he or one of the other conspirators
8 shared a unity of purpose." But, most importantly, Judge
9 Doumar is going to tell you, "Merely associating with others
10 and discussing common goals" -- chewing khat, drinking,
11 having dinner -- "mere similarity of conduct between or among
12 persons" -- they're Somalians, they're on the boat -- "merely
13 being present at the place where a crime takes place or is
14 discussed" -- you can't jump off this boat and swim to shore,
15 you can't take a skiff and steal it and go to shore -- "or
16 even knowing about criminal conduct" -- he sees the torture,
17 he hears the torture -- "does not in and of itself make
18 someone a member of the conspiracy." And Judge Doumar will
19 tell you that better than I could possibly tell you that.

20 And then, lastly, the Court is going to instruct you
21 on reasonable doubt, the burden of proof, and presumption of
22 innocence. These terms are terms that have been with us
23 since the Republic was founded. These are terms that are
24 used in books. These are terms that are used in movies.
25 These are terms that are on TV. You can probably go home

1 tonight and watch a TV show and they'll talk about these.
2 And these TV shows do us all a disjustice, a disservice, and
3 they do us a disservice because they don't understand, as
4 Judge Doumar told you at the beginning of this case, the
5 history and the meaning and the importance and the dignity
6 and the sanctity of these words.

7 But you, as the jury, are charged with the task of
8 taking these words, meaningful, significant words, and
9 applying them to what this case is all about. I wish I could
10 tell you we were watching a movie, and I wish I could tell
11 you that we could turn the clock back, hit the restart button
12 and these four people would be alive. I wish I could tell
13 you that we could take this movie, go back, or a book and
14 start at the beginning, and that these members of the crew
15 would not have been tortured. I wish I could tell you that,
16 but I can't. Because this isn't a movie, and it's not a
17 book. It happened to these people, and it's a tragedy that
18 it happened to them. But, despite that, the government still
19 bears the burden of proving beyond a reasonable doubt that
20 these facts occurred and this defendant was a member of these
21 conspiracy. And the Court will tell you that you have to
22 determine that the government has proven each and every
23 element, which means you need to read these instructions when
24 they're given to you and see what each element of the crime
25 is, and you have to be able to determine that the government

1 has proven beyond a reasonable doubt that this defendant
2 committed those crimes. And the Court is going to tell you
3 that if you view the evidence permitting two conclusions, one
4 of guilt, one of innocence, it's your duty, it is your
5 obligation, it is your oath that you have taken, despite how
6 distasteful you may think it is, despite how distasteful you
7 may think the community thinks it is -- that's not your
8 concern. Your concern is to follow the law, apply the
9 instructions, and find justice. And if you have two
10 conclusions in this particular case of guilt or innocence and
11 both are reasonable conclusions to you, you have to adopt the
12 conclusion of innocence.

13 I'm not going to stand here and tell you that this
14 isn't suspicious. The Court will tell you suspicions are not
15 enough. I'm not going to stand here and tell you that this
16 may not be probable. The Court will tell you probabilities
17 are not enough. Reasonable doubt is the highest burden known
18 to the law. We're not talking about money, we're not talking
19 about who had the red light, we're not talking about whether
20 your car got fixed or your roof is fixed, we're talking about
21 a man's liberty. He may not be a citizen, but he's entitled
22 to the due process of law. And that is what makes America
23 great, and that is what makes you as a jury great.

24 I thank you for your time.

25 THE COURT: Ladies and gentlemen, we're going to

1 continue with the arguments tomorrow morning. We'll start at
2 9:30. The government has a right to reply because it has the
3 burden of proof. Accordingly, we'll come back at 9:30
4 tomorrow morning and hear the government's finish of the
5 closing arguments, and after that we'll have the instructions
6 of the court.

7 Do not begin to make any deliberations until you've
8 heard all of the argument and the instructions of the Court,
9 and please don't discuss the case until after you've heard
10 the instructions of the Court.

11 Everyone please rise while the jury retires. 9:30
12 tomorrow morning.

13 (The jury withdrew from the courtroom.)

14 THE COURT: 9:30 tomorrow morning. Come back at
15 that time and we'll reconvene.

16 (The hearing adjourned at 5:01 p.m., to be
17 reconvened at 9:30 a.m. on April 27, 2012.)

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(Following adjournment on April 26, 2012, the proceedings reconvened at 9:30 a.m. on April 27, 2012, and closing arguments resumed as follows:)

THE COURT: Good morning, ladies and gentlemen. We'll now hear the government's rebuttal.

You may proceed, Mr. DePadilla.

MR. DEPADILLA: Thank you, Your Honor. May it please the Court, Mr. Broccoletti, ladies and gentlemen of the jury, this is my opportunity to rebut some of the points Mr. Broccoletti made.

Now, when he spoke to you he told you that this was a difficult or a tough case, and in some respects it was a difficult and tough case, but it was for the defense that it was difficult. The defendant was on the Marida Marguerite for seven months committing hostage-taking every single day. You heard from five eyewitnesses who were able to observe him over a period of months as he committed the crime. That's difficult for the defense. It is a tough case to listen to. You heard a lot about the bad things that the defendant did. That's tough, too. But it's not a tough case to decide. The evidence is overwhelming. A confession -- two confessions, actually, on the Marida Marguerite side, witnesses, bank records, phone records, pictures, it all adds up to a lot of

1 evidence.

2 Now let's look at some of the comments
3 Mr. Broccoletti made about the law. Piracy -- the defendant
4 is guilty of piracy even though he didn't go on the high
5 seas. He doesn't have to go on the high seas under the law,
6 ladies and gentlemen, and, in fact, the high seas were
7 stipulated to between the parties, so it's not even an issue
8 in this case. The piracy definition includes intentionally
9 facilitating the actions of the pirates who actually go on
10 the high seas. And if you think about that, that makes a lot
11 of sense. It's an intentional facilitation offense that's
12 not restricted to the high seas because the people who are
13 facilitating the guys who go to sea are on the land. The
14 crime has to start on the land. You can intentionally
15 facilitate it any time during the process. It is designed to
16 hold all the members of the organization responsible,
17 including the land-based men. That's what it's specifically
18 designed for, ladies and gentlemen, so the people who hide on
19 land and make those other guys go out to sea are also held
20 responsible. And, just like I said, the defense stipulated
21 the hijackings occurred on the high seas, so it's not really
22 an issue.

23 Similarly, jurisdiction is not an issue, ladies and
24 gentlemen. The parties stipulated the defendant was found
25 first in the United States. That's the only jurisdictional

1 prong the United States needs to prove. And, again, it was
2 agreed to by the parties, so it's really not at issue at all.
3 Let's look at the other offenses really quick under the law,
4 though.

5 None of the other offenses, hostage-taking,
6 kidnapping, violence against maritime navigation, firearms
7 offenses require that the defendant went to the high seas.
8 The high seas has nothing at all to do with any of those
9 offenses on the Marida Marguerite.

10 And Judge Doumar will tell you anyone who conspires
11 or aids and abets others in a crime is guilty of everything
12 they do, including the crimes of carrying firearms, for
13 example. Once the defendant starts working with this
14 organization he's in for a penny, he's in for a pound. He
15 knows that those attackers are going to go out with guns. He
16 knows that from the Marida Marguerite. He was around those
17 people for seven months.

18 So when you look at the weapons charges for the
19 Quest of course he's responsible for that. Juguuf and the
20 gang is not going to go out without being armed to the teeth
21 so they can take the ship. Under the law he bears
22 responsibility for all of those crimes.

23 The defendant is responsible for the ongoing
24 offenses if he joined them at any point. He doesn't have to
25 join at a specific point. He's guilty if he joined before

1 the pirates went out to sea, but, similarly, ladies and
2 gentlemen, he's guilty if he joined later, as long as the
3 offense is still going on.

4 And let's think about piracy for a minute. Piracy
5 doesn't end when you take the ship. You haven't gotten any
6 money out of it. It would be like robbing a bank and then
7 sitting in the bank. You didn't get the money out of it.
8 Piracy finishes when you get the ransom. That's the whole
9 idea behind piracy, not just to take the ship. In fact, when
10 you have the ship the evidence showed it's costing money.
11 Every day you've got to buy khat for the guards, and you've
12 got to bring in food, and you've got to bring in water,
13 unless you have the chief to make it for you.

14 Crime ends when you get the money. He helped them
15 get the money. He didn't need to speak to the pirates on the
16 Quest when they were out there because he was doing his work
17 for the conspiracy back in Somalia. It doesn't matter what
18 part of the conspiracy he's in. Under the law he's
19 responsible for all of it as long as he's an active member
20 within it. So when he's running those searches he doesn't
21 need to talk to Juguuf and the gang; he needs to be talking
22 with Liban Abdirahman, Haji Khyr, Balixule and Hilaac. And
23 if you look at the government's summary chart, 2-10 H, you'll
24 see he made 82 calls over a four-day period and had 35
25 conversations. It appears he was doing his job there.

1 And the defendant is responsible for the offenses
2 even if -- if he does anything to help them accomplish the
3 goals of the crime. Don't narrow him to just one job in this
4 conspiracy. That means if he negotiates he's a pirate. If
5 he works as a pirate guard he's a pirate. If he researches
6 the value of the boat he's a pirate. If he finds the means
7 of contact information to start extorting the victims he's a
8 pirate. It doesn't matter which role he fills under the law.

9 Now I'm going to go through a couple of points
10 Mr. Broccoletti made. The defense says you can't agree to be
11 the negotiator in 77 seconds. Well, first, he didn't have to
12 accept the negotiator job over the phone. Remember, Shibin
13 was already in this organization from his time on the Marida
14 Marguerite, right? He worked directly with Liban and Hilaac
15 before any of the calls for the Quest occurred. Remember,
16 from the stand Sarin-daaq said that Liban, Hilaac and Shibin
17 got an armed escort out of Garaad. They're already in this
18 as thick as thieves before any of those calls.

19 But let's test the 77-second principle from
20 Mr. Broccoletti. Liban: "Uncle, we have a ship. Run the
21 numbers." Shibin: "Okay." That was less than 77 seconds.
22 That gets the job done.

23 You know what also gets the job done a lot faster
24 than 77 seconds? Text messaging. That's where it's at in
25 today's world, right, ladies and gentlemen? "Sarin-daaq

1 captured Americans." That's a lot less than 77 seconds, and
2 look at the information that it transmits. You're starting
3 to run the numbers on Americans. As the defendant told you,
4 the Germans are worth more than the Turks. The Americans are
5 worth more than the Germans. It's just a matter of how
6 wealthy your country is.

7 Another defense: Hostages were upset and confused.
8 But that still leaves the defendant on the boat for seven
9 months. He admitted to negotiating the ransom, and he
10 admitted to getting \$30,000. Of course, Sarin-daaq said he
11 got \$50,000. He didn't even need the victims off the boat
12 and he's still guilty of the offense.

13 And let's talk about those hostages for a second.
14 Sure, some of them could have gotten some of the dates wrong.
15 It was over a seven-month period, and it's possible the
16 pirates don't let you write down the actual day you're being
17 tortured. You're there to evaluate what they said from the
18 stand. This isn't a crime that happened in 30 seconds, it
19 happened over seven months. So if they're off on the dates
20 of the torture by a day or two it just doesn't matter.

21 And why would the crew take revenge on someone who
22 was actually helping them? That's what the defendant said in
23 the wiretap calls; that he was there to be their protector.
24 That doesn't make any sense at all. But what they described
25 was he wasn't helping them at all. In fact, he was

1 facilitating their torture to help the pirate organization
2 get what they needed to get this \$5 million.

3 Another thing the defense tossed out: Don't convict
4 him because he's Somalian. I absolutely agree. Don't
5 convict him because he's Somalian, evaluate the evidence and
6 convict him because he committed all these crimes. Our
7 system doesn't care where you're from or who you are. It's
8 supposed to be fair to everyone. Evaluate the evidence,
9 apply the law as the Judge gives it to you. And it's proved
10 beyond a reasonable doubt. It's all about being reasonable,
11 ladies and gentlemen.

12 Another defense: The captain and the chief never
13 told the German police that Shibin had a gun. Well, let's
14 think about those interviews for a second. Remember, they
15 took place in Oman. They were right after these men were
16 freed after seven months in an intense situation where they
17 were tortured. The question was, "Was the negotiator armed?"
18 But remember who was asking it. Neither party had English as
19 a first language. You have a German detective asking an
20 Indian national a question. If you look at that question on
21 its face, "Was the negotiator armed," no, the negotiators
22 weren't armed. The question wasn't, "Was Shibin armed at any
23 time?" Then the answer would have been, "Well, sure. He was
24 armed when he was a pirate guard."

25 But let's just put these people to the side for a

1 second. Remember Mr. Broccoletti, when he was making that
2 point, never brought up Sandeep Denghwal. Sandeep Denghwal
3 said he remembers Shibin being armed with a gun very clearly,
4 because when he refused to fix the leak the defendant pulled
5 out the AK-47, pointed it at him and said, "Fix the leak."
6 The defendant had a gun on the ship when he was a guard, and
7 he didn't have a gun on the ship when he was a negotiator.
8 It still makes him guilty of the weapons offenses.

9 He's an immigrant. He's not from the United States.
10 That seemed to be another defense theme. But look at how the
11 defendant treated people from foreign countries; the Indians,
12 the Ukrainian. He tortured them. And then compare that to
13 how he was treated; given his Miranda rights, which is
14 proper, given a physical, treated with respect. Again, it
15 doesn't matter that he's an immigrant, not from the United
16 States.

17 The defense: The phone records support Shibin's
18 statement to Coughlin. Remember, if it's going to support
19 Shibin's statement to Coughlin we need two calls, right? And
20 Mr. Broccoletti brought up first the first call is on
21 February 17th. One problem with that; he'd have to be able
22 to see the future, because they haven't taken the Quest yet.
23 So, obviously, that can't be the call the defendant says
24 exists. So that means the first possible call is on the
25 19th, ladies and gentlemen. But, remember, to support his

1 defense you need two calls, and Mr. Broccoletti showed quite
2 clearly there's not a third call. It doesn't support his
3 defense.

4 Another defense: Shibin cooperated with law
5 enforcement. Well, let's see what he did. He confessed to
6 negotiating a German ship to American agents. How does that
7 help the American agents? It's a German problem. At least
8 that's what he's thinking. He doesn't realize the Germans
9 and Americans will work together. But what did he say to the
10 Americans about the American case at that time? He gave two
11 totally different stories. And you can't reconcile them,
12 ladies and gentlemen, right? Personal curiosity is not the
13 same as, "Hey, I looked at it, and I didn't take the job."
14 He didn't help law enforcement.

15 And let's talk about Jilani a little, because
16 Mr. Broccoletti talked about him a lot. Mr. Broccoletti said
17 Jilani said that Shibin said that he came off the ship with a
18 stack of money and then he went back on the ship. I beg to
19 disagree, ladies and gentlemen. And it's your memory that
20 controls.

21 What Jilani said was, "Shibin came off the German
22 ship on the khat boat. I asked him what he would do if he
23 got the ransom money." And then, of course, he goes back on
24 the German ship because he doesn't have the money yet.
25 Shibin said he would invest the money back into the sea.

1 That's what I believe the testimony is, but, again, it's your
2 memory that controls that.

3 The defense said that Jilani said, "Balixule told me
4 Shibin was an investor in the Quest." The problem was -- and
5 I'm sure it wasn't intentional -- Mr. Broccoletti got the
6 name wrong. And, I mean, it can happen. They are tough
7 names, and there's a lot of pirate commanders here. What
8 Jilani said was, "Haji Khyr told me Shibin was an investor in
9 the Quest." You might ask, "Well, why is that important
10 which pirate commander told him Shibin wasn't invested in the
11 Quest?" It's important because, remember, Shibin himself
12 told Agent Coughlin that Haji Khyr was the one who offered
13 the job, right? That's the defendant corroborating Jilani
14 that he is being truthful here.

15 The defense made a point. All the pirates are
16 talking together in the jail. They're getting their stories
17 straight. Well, let's look at what they testified about.
18 The one time that Jilani and Sarin-daaq's testimony
19 overlapped where they were talking about the same thing was
20 about the investors. Both said -- Jilani and Sarin-daaq said
21 Balixule, Haji Khyr, Liban and Hilaac were investors. Who
22 else said that? It was the defense pirate, the pirate they
23 put on the stand. He said Balixule, Haji Khyr, Liban and
24 Hilaac were investors. So how is everyone getting their
25 stories together? They called that witness, ladies and

1 gentlemen, we did not.

2 And, remember, we don't get to pick the witnesses.
3 Shibin gets to pick the witnesses, because these are the
4 people he works with. Sure, pirates are horrible people. We
5 all agree to that. But if we're going to get to these people
6 on the land we're going to have to talk to some pirates.
7 And, remember, both sides called pirates in this trial. It's
8 just part of how the system works. None of us like pirates,
9 and you have to evaluate their testimony. But, remember, the
10 pirates the government called, for the most part, were saying
11 the same things as the pirates the defense called.

12 What else did the defense pirates say? "Investors
13 pick the negotiator." Our side totally agrees with that.
14 Shibin called the investors 82 times over the course of the
15 Quest hijacking. That seems to corroborate that the defense
16 pirate is telling the truth. But what did Sarin-daaq say,
17 the pirate the government called? "The investors pick the
18 negotiator," the exact same thing that the defense pirate
19 said.

20 Mr. Broccoletti says the entire Quest case depends
21 upon Jilani, and that would be absolutely true if you were to
22 ignore the bridge-to-bridge translation where the pirates
23 give out Mr. Shibin's name as the person who is going to be
24 their negotiator. You'd have to throw out that entire phone
25 with the 82 calls to the investors over the four-day period.

1 You'd have to throw out the searches, those pirate-specific
2 searchs, that are really only good for negotiating a ransom.
3 And not just for the Quest but for that Italian ship as well.
4 And, finally, you'd have to throw out the defendant's two
5 statements to two different investigators. And not over a
6 long period of time; on two successive days. At that point,
7 he's right, the Quest case would depend on Jilani. The Quest
8 case is built upon a lot of evidence, ladies and gentlemen.

9 So what really happens is they're following -- the
10 Navy follows the Quest, and the pirates say, "Call Shibin;
11 he's our negotiator." They give his number. That's the same
12 number off the Marida Marguerite. It's all coming together.
13 Does it make sense with the Navy on top of them they're going
14 to implicate the wrong guy? That doesn't seem reasonable at
15 all. Shibin is a good negotiator. He had just gotten
16 \$5 million out of the Germans. And of course he would have
17 negotiated with the Navy to get the ship to Somalia. They
18 really weren't terrorists. As the defense pirate said, "This
19 is all about money." We all agree to that; it's all about
20 money with Shibin.

21 What else did the defense pirate do? He said, "We
22 didn't use our real names when we told the Navy to make that
23 call." Well, think about that for a second. So when the
24 Navy called Shibin how was he going to know what the call was
25 about? That starts to sew some problems with the defense

1 pirate here, the one they called.

2 And then the defense got up here and told you, "You
3 can't believe the pirate." They called him, we didn't call
4 him to the stand. We agree, you can't believe him on
5 everything, right? Look at what he's told the government
6 before. His first statement on the Enterprise was, "I called
7 Shibin, told him we would call him if we got prey." What is
8 important about that is the timing, because then Shibin is
9 just another guy in Somalia. He's not giving up his friend.
10 He doesn't believe the United States has the ability to go
11 into Somalia and get Shibin at that point. It just hasn't
12 happened yet. His first and second debriefs: Shibin agreed
13 to be the negotiator. Where did his statement change? At
14 trial, when he had to sit there and face his friend.
15 Because, remember, it came out in evidence he's close to the
16 defendant. He's in the same family. That's why he's not
17 telling the truth now.

18 Another defense: You can call him a negotiator, you
19 can call him a translator, you can call him an interpreter.
20 What's important, ladies and gentlemen, is the pirate
21 organization is not going to pay him unless they're making
22 money for the pirates, right? Nobody just gives \$30,000 to
23 somebody if they're not helping the organization.

24 Another defense: Visas on the 18th so he would
25 never leave his business interests. But, remember, we've had

1 testimony from the stand not all the pirate skiffs catch
2 ships. In fact, some of them go out and come back. Some of
3 them go out and don't come back at all. So he would have to
4 be there all the time. But the flight records show he can
5 fly back and forth quickly to Zambia. So if they caught a
6 ship and he was already in Zambia he could start with a
7 three-way call, get on a plane and go back to work. These
8 are not hard concepts. It's not a defense.

9 Defense: Shibin came back to Somalia right away, so
10 he must be innocent. Let's think about that for a second.
11 He spent a month lying low in Zambia after these defense
12 forces took his phone and gave it back to him. That's not a
13 short time. He came back to Bossasso, not Galkayo, where the
14 defense forces took his phone. Mr. Broccoletti brought out
15 how far apart those two are. He made sure he relocated.
16 Even more importantly, he came back without the phone. That
17 was the smartest thing he did. He told the agents that he
18 lost it in a cab, but if you look at some of those screen
19 shots he had held onto that phone for four years. The screen
20 shots from 2008 -- he just happens to lose it when he comes
21 back?

22 At the rate he was spending the Marguerite money, it
23 would be time to get back to work. When he went to Bossasso,
24 if you look at the chart that's in evidence, you will see
25 he's blowing about \$10,000 a month or something like that,

1 five to ten thousand. That's why he came back; he had to get
2 back to work.

3 To believe the defense, ladies and gentlemen,
4 everyone else would have to be wrong; the crew, the pirates,
5 the agents. The NGO/hostage/investigative journalist, who
6 was just curious and didn't accept the job, would have to be
7 right then. Ask yourself is that reasonable at all. Because
8 Mr. Broccoletti spent some time talking about reasonable
9 doubt. The Judge will charge you that reasonable doubt isn't
10 beyond all doubt, it's just what is reasonable. And ask
11 yourselves is it reasonable that this organization that is
12 all about money is just going to hand this man \$30,000 for
13 not doing anything? That's not reasonable at all, ladies and
14 gentlemen.

15 In the defense opening Mr. Broccoletti said it was a
16 big mistake that he took the money. Is that reasonable; that
17 somebody is going to make a big mistake? The defendant
18 confessed that he got somewhere between \$30,000 to \$50,000.
19 He says \$30,000; Sarin-daaq said \$50,000. Remember, the bank
20 account has 370 one-hundred-dollar bills, the same type of
21 bills that came off the Marida Marguerite. So the truth is
22 probably somewhere in between. It's not reasonable that he
23 isn't part of this organization.

24 Now, remember, ladies and gentlemen, one of the last
25 things that he told Chief Oleg Dereglazov. He said that,

1 "This is a business, and it's not going to stop." As long as
2 there is no enforcement or consequences for these acts it's
3 not going to stop. The money is just too good. And that
4 statement on its face is so arrogant: "This is all business,
5 it's not going to stop. We don't care about you." Prove him
6 wrong. Make him stop.

7 Thank you for your time.

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13 CERTIFICATION

14
15 I certify that the foregoing is a correct transcript
16 of an excerpt from the record of proceedings in the
17 above-entitled matter.

18
19
20
21 s/s

22 Heidi L. Jeffreys

23
24 August 6, 2012

25 Date

Heidi L. Jeffreys, Official Court Reporter